No. 14197

IN THE

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

CONSOLIDATED FOODS CORPORATION,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

Petition to Review and Set Aside Order of the Federal Trade Commission

JOINT APPENDIX

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE
FEDERAL TRADE COMMISSION

IN THE MATTER OF

CONSOLIDATED FOODS CORPORATION

Docket No. 7000

Before: Honorable Earl J. Kolb, Hearing Examiner

In this and succeeding volumes are included the portions of the transcript and the exhibits designated for inclusion in the Joint Appendix by each of the parties. For purposes of identification, counsel participating in the proceedings were as follows:

Consolidated Foods Corporation:

Mr. Owen
Mr. Walker
Mr. Rothe

Federal Trade Commission:

Mr. Hays
Mr. Von Brand

All omissions from the transcript of proceedings are designated by asterisks. In some instances, a summary statement of omitted proceedings is included.

1 BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of Consolidated Foods Corporation, Respondent

Docket No. 7000

Chicago, Illinois
April 29, 1958

2-29 PROCEEDINGS

Hearing Examiner Kolb: This is the initial hearing in Docket 7000, Consolidated Foods Corporation. You may proceed.

* * *

Mr. Hays: (attorney for the Federal Trade Commission): * * * I have a number of documents that I ask be marked for identification, and the identification be placed in the record. [At the request of Mr. Hays, Commission Exhibits 1 through 97 were described and marked for identification. It was stipulated by counsel for respondent, Consolidated Foods Corporation, that Commission Exhibits 6 through 97 came from the files of Gentry, and that they were sent or received by the person indicated in the document itself.]

* * *

30-44 Mr. Walker: (one of the attorneys for respondent) [Mr. Walker first objected to Commission Exhibits 1-97 on the ground that they related to events occurring subsequent to the acquisition of Gentry by Consolidated. This objection was overruled by the Hearing Examiner. Mr. Walker next objected to these exhibits on the ground that they involved matters which should be proceeded against under Section 5 of the Federal Trade Commission Act rather than Section 7 of the Clayton Act. This objection was overruled by the Hearing Examiner. Mr. Walker next objected to Commission Exhibits 1 and 2 on the ground that

they contained information that is irrelevant, immaterial and prejudicial to respondent and constituted simply opinions and conclusions. This objection, too, was overruled by the Hearing Examiner and Commission Exhibits 1 and 2 were received in evidence. Commission Exhibits 3 through 5 were then received in evidence.]

• • •

44 Mr. Walker: The next objection, your Honor, relates to Exhibits 6 through 97. These exhibits, your Honor, and almost without exception are replete with hearsay statements.

They contain many opinions, and conclusions by the writers. There is no showing, your Honor, and there has been no showing here that these documents are all written by persons who are agents of Consolidated Foods,
45 the respondent, and acting within their authority, and it is only upon that theory, your Honor, that they could be binding upon Consolidated.

Now, this includes, particularly, the call reports of which there are a large number throughout these documents.

Finally, your Honor, for all of these reasons, because of the hearsay, because of the statements of opinions and conclusions contained in these documents, and because there is no showing of proper authority as to the documents, this is not reliable evidence within the scope of the rules applicable to hearings before the Federal Trade Commission.

Now, I will not, of course, your Honor, go through every single one of these documents, and point out wherein each one is subject to these one or more of these varying objections.

I would like, however, your Honor, to point out that just taking the first document, Exhibit 6, there are references to matters which are strictly hearsay. The same is true of Exhibit 8. The same is true of Exhibit 17, and if you run

through, your Honor, you will see that, as I say, almost without exception within the body of these letters, there are descriptions of conversations had with others.

46 It is also obvious, your Honor, from an examination of the documents that they contain literally many, many statements of opinions and conclusions, and, finally, your Honor, it doesn't require a refer ice to the documents themselves to support the statemen that there is no showing that the people who wrote th e documents were acting within the scope of their authority as agents of Consolidated.

Now, I realize, your Honor, that it has been said many times that the rules of evidence are somewhat relaxed in proceedings before the FTC, and other administrative agencies.

There, does, however, remain, your Honor, this criterion of reliability, and every single one of these points that I have raised in this objection go to this question of reliability.

I submit to your Honor that this proceeding should not depend upon the unverified statements in these letters of conversations taking place not only with the person who wrote the letter, but by persons completely outside of that person.

There is double and triple hearsay in these documents, your Honor, and that sort of evidence just should not be the basis for an action of this type.

47 The same thing is true of the opinions and conclusions.

Now, I have not heard from counsel--perhaps he has some reason that he will advance as an exception to the hearsay rule under which these documents are admissible.

As your Honor knows, in a court of law, they would clearly not be admissible. The question here, as I say, may be slightly different than it is before a court of law, but

still your Honor should consider whether the examples of hearsay, statements of opinion and conclusion, no showing as to authority, are not sufficient to render these documents unreliable as evidence in this proceeding.

Counsel supporting the complaint will have ample opportunity and the government has the resources to call as witnesses these people to find out, and inquire from them on the stand as to the facts that are related in these documents. At that time, your Honor, we would have our right of cross examination to find out whether these people are really telling the truth in these various documents that are included in this group of exhibits.

For these reasons, your Honor, we think it is not only not necessary to place these documents in evidence, but because they are unreliable, and untrustworthy for the reasons that I have stated, they should not be received in evidence.

48 Mr. Hays: May I state that I would have to agree that we have not shown that the people sending these letters and receiving these letters are agents of Consolidated.

I am sure, though, and I am sure that respondent's counsel will agree that we certainly can show who Mr. Clausen is, who Mr. Kennedy is, who is here in the room, and who the various people thereon are.

Therefore, if that objection is made, we offer these subject to the connecting up that the people sending and receiving were agents of Consolidated Foods.

With reference to the other objections, we submit that these documents came from the files of the respondent corporation; that many of them have been preserved for a period of seven or eight years, since 1951, and as such, come within the scope of Title 28, Section 1732, U. S. Code, which is known as the Federal Shop Rule.

Number two, these documents are further admissible to

show company policy of Consolidated Foods, to show its formulation, to show it is being carried out, and to show its result.

Number three, they are further admissible, many of them, as admissions as corporate admissions. Many of them are signed by Mr. Cummings, some of them are signed by Mr. Kennedy—as corporate admissions, and if they don't
49 have the authority to sign—to bind the corporation, I certainly don't know who has with reference to this policy, and particularly with reference to the position taken by respondent wherein they denied our allegations on page 3 of the complaint with reference to adverse competitive effect.

I submit there is absolutely no reason to put these people on the stand and ask them questions. These documents were written prior to the time this complaint issued. They were written with no motive to falsify. They were retained in the files of the corporation, and they were sent from and to responsible individuals in this corporation, as we will show.

There is certainly no reason that these aren't just as reliable as any testimony that they might give.

Furthermore, if the facts stated in these documents are not correct, respondent's counsel, when they come to their part of the case, can put these witnesses on the stand, and let them deny it, and balance their denials with the facts in these letters, or else they can show by other evidence that the facts are not correct.

Mr. Walker: May I respond, your Honor?

Hearing Examiner Kolb: Yes.

Mr. Walker: It occurs to me, your Honor, that it is a
50 strange rule of law that would place a litigant in the position of admitting documents, and placing them in evidence which are contrary to the rules of evidence, and then excusing this on the grounds that that party can call a witness and dispute the documents if he so desires.

What we are concerned about here, your Honor, is whether these documents satisfy the rules of evidence. If they do satisfy the rules of evidence, then they are admissible. If they do not, then they are inadmissible.

As to the first point raised by counsel supporting the complaint, your Honor, and that is the question of, as he puts it, connecting up the individuals, it is simply not that simple, your Honor.

We are not objecting on the grounds that there is no showing that these people are employes of or related to Consolidated Foods. What we are objecting to is that there is no showing that these people had authority to bind the corporation.

Now, surely, there are some documents in here wherein—written by officials such as Mr. Kennedy or Mr. Cummings about which there can be no question in this area. There are also more documents, your Honor, and quite the largest number of them that are written by individual salesmen whose contractual or other relationship with the corporation even I am not sure of.

51 It is a question, your Honor, of authority, not a question of connecting up, and I should like, if I may, your Honor, in this connection refer to United States versus United Shoe Machinery Corporation, an opinion by Judge Wyzanski, in 89 Federal Supplement 349. This very question was concerned by Judge Wyzanski in that case, and he stated as follows, if I may quote:

"Where the natural person has an agent who makes a statement to a third person, the statement is the principal's if the agent was authorized to make the statement, or was authorized to make on the principal's behalf true statements concerning the subject matter," and continuing with relation to corporations, "The difficulty arises with respect to officers and employes. Where these agents speak to the outside world, the corporate principal, like the individual

principal is, by the fiction of respondeat superior, held accountable for the agent's statement if he was authorized to make the statement, or was authorized to make on the principal's behalf true statements concerning the subject matter," and that is the very opinion, your Honor, that we are invoking here.

Before these documents can go into evidence, there must be some showing, your Honor, that these people who wrote the documents were authorized to speak for or on behalf of Consolidated in this area.

52 Hearing Examiner Kolb: Doesn't that apply to statements made to third parties, and not to inter-office communications among the officers or employes themselves?

Mr. Walker: Where these statements, your Honor, relate to dealings with outsiders, the same rule, it seems to me, should be applicable.

Most of the statements that we are referring to in here that are objectionable, your Honor, refer to conversations between Consolidated Foods Corporation employes, or representatives, whatever their authority may be, and outsiders, and the very question which is raised by the complaint, and the issue on which counsel seeks to put these documents in evidence is not the relationship between Consolidated and Gentry, intra-corporate, but the relationship between these employes of Consolidated and outsiders, and what they did in relation to those outsiders.

This is particularly relevant, your Honor, in respect to many of the call reports, and other documents that are written in here by a gentleman named Mr. Kraham, whose authority I am not sure of at this moment, and in many of these documents he refers to conversations by him with outsiders, and it seems to me that these documents, in particular, should be subject to a showing that this gentleman, Mr. Kraham, had the authority to make these statements to outsiders.

Going on, your Honor, to the Shop Book Rule which
53 Mr. Hays cites as supporting reasons for admitting these documents in evidence, I think it is reasonably clear from the record that has been produced thus far, your Honor, that the requirements of the Federal Shop Book rule simply have not been met here.

There is no showing that it was the usual and customary course of business for the people who wrote these letters to keep records in this form, and that is one of the elemental requirements of the Federal Shop Book Rule.

This question, your Honor, in almost the same form that it is presented here came up quite recently under the Federal Shop Book Rule in Standard Oil Company of California versus Moore, 251 Federal, 2nd, 188. That was decided by the United States Court of Appeals for the 9th Circuit on November 6, 1957.

In that case, your Honor, which was also an antitrust case, hundreds of exhibits were offered and received in evidence in proof of an alleged unlawful agreement combination or conspiracy.

The court discusses at great length, running on for several pages here, your Honor, the question of whether all of these exhibits could be received in evidence under the Federal Shop Book Rule.

Many of the documents that were involved there are quite similar to those that we have here. They were
54 memoranda, letters and telegrams, many of them inter-office and some of them a small portion, it seems from the opinion, were outsiders.

The showing there, so far as a foundation for admissibility was concerned, was almost precisely the same as it is here. It was shown that the documents came from the files of the corporation, and there was no denial that the persons whose names appeared on the documents had actually written them. The court held, however, that the documents

could not come in under the Federal Shop Book Rule, and the court rules for generally two reasons:

One, that the documents included many which contained opinions, conclusions and hearsay, and that there was no sufficient showing that the Federal Shop Book Rule in these circumstances should excuse letting the documents in that contained that material.

The second reason was that there was not a showing of a proper foundation for admissibility in evidence under the Federal Shop Book Rule. There was no showing, the court pointed out, that the memoranda, letters and telegrams and so forth had been made in the regular course of a business, and I will quote if I may just briefly from this, your Honor:

"With regard to few, if any, of these exhibits, was
55 there testimony indicating that it was a regularly established procedure to make such memoranda, or records at the time of the act, action, occurrence or event therein described or within a reasonable time thereafter," and that was the fundamental defect so far as lack of dounation [sic] was concerned that the court relied on in reversing for the admitting in evidence of these documents.

Here, your Honor, there is absolutely no testimony whatsoever, no evidence, that it was the regular course of business, or regular established procedure to write the letters or memoranda that are included within this miscellaneous group of documents that we have before you.

I submit, your Honor, that the requirements of the Federal Shop Book Rule just have not been met here.

Hearing Examiner Kolb: Doesn't that case involve the obtaining of market information by the parties from outsiders?

Mr. Walker: Some of it.

Hearing Examiner Kolb: Which would not under the ordinary course of business or their regular duties.

Mr. Walker: Some of the documents, your Honor, did

relate to obtaining material from outsiders. Apparently, your Honor, some of these documents refer to information relating to activities within the company.

56 The important thing, though, as I see it, your Honor, is whether or not there is a compliance with the statutory rule under which documents may be admissible. So far as I understand the law, your Honor, to get documents in under the Federal Shop Book Rule you must comply with the statutory requirements as to foundation, whether those are documents between the corporation and third parties, or whether they are intra-corporate documents.

As a matter of fact, we do have one document in here that I noticed in going through it this morning that is a letter between Consolidated Foods Corporation and an outsider. There has been no showing whatsoever, and there is no way it can be told from the document, your Honor, that it was in the regular course of business for each of these individuals in various sections of Consolidated to write to other divisions or subsidiaries of Consolidated in the manner here reported, and without such a showing, your Honor, there is simply no foundation for admitting these in evidence under the Federal Shop Book Rule.

The argument made, your Honor, that these documents are admissible to show company policy has me confused. I do not understand why a showing of policy within the document, even if that be such, makes documents admissible which would be otherwise inadmissible.

57 If the documents are hearsay and cannot be justified under an exception to the hearsay rule and cannot be justified under the Federal Shop Book Rule, then it seems to me immaterial whether or not they do show company policy, and, further, your Honor, I don't see how it is possible to say that these documents show company policy unless there is some showing that the people who wrote

the documents were authorized to make company policy, and there has been no showing in that area either.

For these reasons, your Honor, and unless more foundation can be laid, or an exception to the hearsay rule pointed out under which these documents are admissible, it just seems to me that not only are they legally inadmissible for the reasons that I stated, but as I have said, all of these arguments are reasons why they are unreliable and should not be received in evidence.

Mr. Hays: May I just answer briefly with reference to, number one, the policy aspect of it.

I respectfully direct the Examiner's attention to the fact that the respondent here is a corporation. A corporation can only act through its agents, and its agents in many instances establish company policy by instructions, or information given to other agents, the basis for which is preserved in file copies of letters, which, obviously, from the mass here, are kept in the ordinary course of business.

58 These are letters and correspondence. They aren't market statistics, or they are not some unusual transaction that occurs, obviously, from the face of it.

From reading these documents, together in a group, it is obvious that the call reports themselves form the basis upon which action was taken by other divisions of Consolidated Foods.

Hearing Examiner Kolb: It seems to me that your objection may be too broad, in other words, your objection to all of the documents.

Mr. Walker: May I just say on that no criticism was intended for counsel supporting the complaint but it was only yesterday that we found or knew the identity of the 97 documents that would be offered in evidence today.

I should be happy to go through these, your Honor, and indicate more directly wherein those documents appear that are susceptible to the objection on the grounds of hear-

say, or that they contain opinions and conclusions, or that there has been no showing, and cannot be assumed from the title shown on the document that the person was authorized to speak for Consolidated.

I cannot stress too much, Mr. Examiner, that there are some flagrant examples of double and triple hearsay in these documents.

Hearing Examiner Kolb: We don't know who these
59 men are? I assume they are employes of the company, and probably in responsible positions—some of them.

Mr. Walker: They are employes, your Honor. I would say they are not in responsible positions. Mr. Kraham, for example, was a field salesman who had no authority to say many of the things that he says in here, and I might say, for what it is worth at this time that our independent investigation satisfies us that some of the things he has said in these documents are entirely untrue, and direct falsehoods.

Hearing Examiner Kolb: Mr. Bellisime's name appears off and on. I assume he has authority.

Mr. Walker: There is no question about the authority of Mr. Bellisime, or Mr. Kennedy, or Mr. Prater, the officials of Gentry and Consolidated.

Hearing Examiner Kolb: You wouldn't be objecting to those particular documents, would you?

Mr. Walker: Not on that ground, but certainly in relation to the documents that even those that have hearsay in them, your Honor, I don't see the exception to the hearsay rule under which those are admissible.

Mr. Hays: It seems to me the substance of respondent's position is that none of the agents have authority to make any statements which might be used here in evidence. That is their position.

60 If you look at those documents, the way reliance is placed upon them, and the way Mr. Bellisime and Mr.

Kraham and their—in their correspondence coincides with a similar type of action taken in the case of Mr. Kennedy and Mr. Cummings, I think it is pretty obvious that they had that authority.

Hearing Examiner Kolb: Another thing that occurs to me, there is some correspondence here with Consolidated Grocers Corporation, for instance—

Mr. Owen: (one of the attorneys for respondent): We will stipulate that Consolidated Foods Corporation was the same corporation as Consolidated Grocers Corporation, if that is what you are addressing yourself to. There has been a change of name by charter amendment.

Hearing Examiner Kolb: I see. I ran through some of these documents and saw Consolidated Grocers.

Well, I don't think that we have as strict a rule so far as authority is concerned as we would have where you are attempting, for instance, to establish liability of a third party by reason of the authority of an agent.

Here you have agents who are corresponding between themselves, apparently in the ordinary course of business, and these documents are kept in the files of the company, and apparently there was some basis for their action,
61 but I do think that you have raised a question here as to who these men are and so forth. I thought that would be stipulated, and I think probably the best way to do it is to go through these and pick out the ones that you really object to and let's take that—if there are any here—

Mr. Walker: Solely, your Honor, on the ground of lack of authority.

Hearing Examiner Kolb: Well, you may have some other objection, but I don't think your objection goes to all of them.

Mr. Walker: No, I am sure there are a few documents in here, your Honor, which have either no hearsay in them or no opinions and conclusions in them, but I think we are

going to find in going through them that there are very, very, very few of those.

Hearing Examiner Kolb: For instance, I am looking at your call report. That is a printed form which apparently is used by salesmen to make their reports.

Now, when a salesman makes a report, I think probably that becomes part of the company records under the ordinary course of business.

Mr. Walker: That is right, your Honor, but—

Hearing Examiner Kolb: If he has said something in there that is not correct, perhaps that is up to you to show that later on.

62 Mr. Walker: Well, of course, we will abide by your Honor's ruling.

I do believe that where there is this obvious hearsay even in something like a call report, we have to have something more in the way of a foundation to satisfy the rules.

Hearing Examiner Kolb: I haven't read the call report so I cannot go into that.

I was glancing through here and I notice your call report appears to be the regular form report that salesmen make when he is out in the trade making his calls and so forth, and I think the salesmen's reports made in the ordinary course of business would be admissible.

I wish you would go over them and—

Mr. Walker: What about the documents, Mr. Examiner, that are not call reports? Many of these are just letters from one individual to another. Let's take the ones by officials of the company. There is still no foundation laid to show that these are letters written as the statute requires in the regular course of business, and that it was the duty of that person to keep a record of the events in the way that it is done here.

Without such a foundation, your Honor, I simply do not see how these letters are admissible.

Hearing Examiner Kolb: If you take that posi-
63 tion, then it is incumbent upon the Commission to put a witness on the stand and testify. That is what I was hoping we would avoid.

It looks like you are going to have to put some people on the stand to testify as to who they are and what they are doing.

Mr. Hays: Even if I put on the stand someone to tell me what Mr. Bellisime did, I think they will stipulate that he was vice-president in charge of sales of the Gentry Division.

Mr. Walker: He held varying positions. At one point he was vice-president of Gentry.

Mr. Hays: Well, at the time he wrote many of these letters he was vice-president. They will stipulate to that, I'm quite sure.

What they want me to show, and what they are insisting that I show here is direct authority, some corporate minute, or something of that kind to show that he had authority to do the business that he did.

Mr. Walker: Further, if I may, that it was the usual and customary course of business in order for the documents themselves to go in, your Honor, in other words, a compliance with the Federal Shop Book statutory requirements which are spelled out right in the statute.

64 Mr. Hays: Surely you don't contend it is not usual for a person to make a file copy of a letter that he sends to another.

Hearing Examiner Kolb: That case is not quite as simple as you make it. I will have to go over it carefully and go over it again.

Mr. Walker: Your Honor, I certainly wholeheartedly agree with you the opinion is a long one and there is an extended discussion of this point and facts, some of which are different, but there is no getting away from the fact that the statute itself requires not only the Moore case but

others have said there must be a factual showing of the type that I have described as a foundation for admissibility under the Federal Shop Book rule, and that is required by statute, your Honor, and I see no way it can be waived.

Mr. Hays: With reference to letters?

Mr. Walker: With reference to any document that is sought to be placed in evidence under the Federal Shop Book rule. As a matter of fact, as I say, these requirements are spelled right out in the statute.

Hearing Examiner Kolb: Off the record.

• • •

65 SYLVESTER M. KENNEDY was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. State your full name for the record, please?

A. Sylvester M. Kennedy.

Q. What is your position, sir?

A. President.

Q. You are president of Consolidated Foods Corporation?

A. That is right.

Q. And you have been president since April 1, 1951, is that true, sir?

A. No, the fall of 1947.

Q. At least since April 1 of 1951. Mr. Kennedy, I show you Commission Exhibits for identification 89-A and B,
66 93, 94, and 95, and ask you to examine them, and state what they are?

A. Number one is a letter from Mr. Bellisime, Division Vice-President, with reference to contacts he made with Phillips Packing Company at Cambridge, Maryland.

Q. I believe when you say Number One you mean Commission Exhibit 89-A and 89-B?

A. Right.

Q. Is that correct?

A. That is right. This is a letter dated July 7, 1952 written by Mr. Bellisime, again with reference to the Phillips Packing Company at Cambridge.

Q. You are referring to Commission's Exhibit 93 for identification?

A. That is right.

Q. You are now referring to Commission's Exhibit 94 for identification?

A. Yes. Exhibit 94 is a letter written to Mr. Bellisime, acknowledging a copy of his letter in which he advises they have received an order from Phillips Packing Company for one thousand cases of white onion powder.

Q. And Commission's Exhibit 95?

A. Commission's Exhibit 95 is to Mr. Bellisime, that I am forwarding a copy of his letter to Mr. Leo Russo, President of the C. D. Kenny Division in Baltimore with re-
67 gard to the Phillips Packing Company.

Q. With reference to Commission Exhibits 94 and 95, isn't it customary for you to preserve letters of that kind in your files?

Mr. Walker: I will object, your Honor. There is no showing that these letters came from the files of Mr. Kennedy.

Hearing Examiner Kolb: I think that was admitted originally.

Mr. Walker: No, your Honor, these letters came from the files of the Gentry Division out in California, not from Mr. Kennedy's files here in Chicago.

By Mr. Hays:

Q. Those two came from your files, did they not?

A. They were written in Chicago.

Mr. Walker: I would like to make it clear just for the record, your Honor, and not because I think it is a point of

any great substance that these letters all came from the Gentry office in Los Angeles. Exhibit 94 is a letter written by Mr. Kennedy which went out to Gentry and came from the Gentry files, not from Mr. Kennedy's files.

Hearing Examiner Kolb: Has Gentry a copy of the original Letter?

Mr. Hays: Yes.

68 Hearing Examiner Kolb: That would be in their file.

By Mr. Hays:

Q. Do you keep copies of letters of this kind in your files?

A. We have a regular filing system.

Q. That is done in the ordinary course of business to keep a record of your correspondence?

A. Yes, we have a file.

Q. And it is usual for Gentry to maintain letters they receive from you in their file?

Mr. Walker: I object, your Honor. This witness does not have personal knowledge of how the files of Gentry are kept.

Hearing Examiner Kolb: He is president, isn't he?

Mr. Walker: If he has knowledge of Gentry's filing system, that is one thing, but that is not the question that was asked.

By Mr. Hays:

Q. Do you have any knowledge of the Gentry—

A. I have no knowledge, but it is in the ordinary course of business—

Q. —For them to maintain your letters?

A. To maintain a file of all letters a reasonable time.

69 Q. Yes. I am going to show you the remainder of the exhibits, Exhibits 6 through 97 with the exception of the letters you have just seen, and ask you to state whether or not any of these were not maintained in the

records of Consolidated Foods Corporation, or one of their subsidiaries or divisions in the usual course of business?

Mr. Walker: Your Honor, I am going to object very strenuously to this. This is a group of 97 documents which, so far as the record shows, and I know for a fact, is the first time that Mr. Kennedy has seen these documents. I do not see how it can possibly be within the province of a human being to go through a group of 97 documents that he has never seen before, and testify whether they were kept in the files of the Division of a company as big as Consolidated in the regular course of business.

The proper person to ask that is the official in California who keeps these files, not Mr. Kennedy.

Mr. Hays: Not Mr. Kennedy who is the president of the corporation?

Mr. Owen: That is correct.

Mr. Hays: He is not the proper person to ask?

Mr. Owen: If he knows, he may answer. Do you know?

The Witness: I have no personal knowledge how they are filed, or kept out there. It is assumed they do
70 keep files, but I don't go out and examine their files, if that is what you mean, and these are documents I have never seen before.

By Mr. Hays:

Q. They have authority to keep those files, don't they?

A. In the usual course of business, that is expected they would keep files, yes.

Mr. Owen: That is argumentative. Mr. Kennedy, do you know of your own knowledge?

The Witness: No, I don't know. I am just stating that normally that is done. I don't know whether they did it or didn't do it.

By Mr. Hays:

Q. It is normally done, though?

A. In the usual course of business, yes.

Q. They keep files of their correspondence. You do know that, don't you?

A. Yes, they keep files, sure.

Q. And if these documents came from those files, they would have then been kept in the ordinary course of business wouldn't they?

Mr. Walker: I will object. It calls for a conclusion beyond the province of this witness' ability to answer, your Honor.

Mr. Hays: I think the foundation has been laid.

71 Hearing Examiner Kolb: The man is president of the company. He may answer.

The Witness: Within a limited degree. I mean, you don't keep files indefinitely. We have a policy in the company where certain documents are kept a certain number of years, and certain documents are destroyed after a certain number of years. We couldn't possibly keep all of the letters and all of the invoices that we have handled during a ten year period, for example.

By Mr. Hays:

Q. But, obviously, those were not destroyed because they are here now, aren't they, so they were kept in the ordinary course of business, weren't they?

A. Apparently. I have never seen these letters before. I did not get copies of them.

Q. If they did come from the Gentry files, and the files were kept in the ordinary course of business as records of correspondence and call reports, they then would come within that category of being made and kept in the usual course of business, wouldn't they?

Mr. Walker: Excuse me, there are two questions here, and I think it is important that we separate them.

I will stipulate with counsel, your Honor, that these documents came from the files of Gentry, and that those files

that Gentry had from which these documents physi-
72 cally came were maintained by Gentry in the regular and ordinary course of its business.

I will not stipulate, your Honor, and the issue here is not whether the documents were filed in the regular course of business, but whether it was the regular course of business to make a record by letter of the types of transactions that are here referred to. That is the issue, not the question of Gentry's filing procedures.

Mr. Hays: That is argumentative in itself. My point is if I establish that it was in the ordinary course of business for them to file these letters, and that these letters came from the file prima facie they are evidence of records of transactions made in the ordinary course of business.

That is all I intend to establish, and you may stand on that or you may wish to go further.

Mr. Walker: Your Honor, if I may, I think it is quite clear from a reading of the statute that controls this type of evidence that there must be a showing of two things:

There must be a showing that the documents were kept in the regular and ordinary course of business; that showing has been made and we do not controvert it.

The statute also requires that there be a specific showing by weight foundation as the Moore case emphasizes
73 that it was the customary, and usual course of business to record the types of transactions there involved at or about the time of the transactions in the form in which they were recorded, that is, by letter.

If there is no showing of that—if, for example, you have a situation where an employe of a company writes a letter from time to time about company business, those letters do not come within the statutory qualifications set up by the Federal Shop Book rule, and it is that point which is emphasized in the Moore case, your Honor, on which there is no evidence before the court whatsoever.

Mr. Hays: I would like to re-offer Commission's Exhibits 6 through 97 on the basis that there has been a showing that will enable them to come within the Federal Shop Book Rule, subject to a stipulation which we will enter into, that is, respondent will furnish me with the positions of these various people writing these letters, and making these call reports.

Hearing Examiner Kolb: Are you saying, Mr. Walker, that you are going to admit that these letters came from the files of the Gentry Division, and that they were kept in the ordinary course of business?

Mr. Walker: I am saying that that is not sufficient, your Honor—

Hearing Examiner Kolb: At this moment I just
74 want what you are agreeing to.

Mr. Walker: I will stipulate, your Honor, that these documents came from the files of Gentry, which files were maintained by Gentry in the regular course of its business, and, that, I am saying, is one half of the requirements under the Federal Shop Book rule, but not the whole requirement.

Hearing Examiner Kolb: Further testimony that you want is what?

Mr. Walker: Testimony that will show, your Honor, that these documents were made in the regular course of business, that is, written in the regular course of business, and that it was the regular course of such business to make these memoranda or records of particular transactions, events or occurrences.

That is the language that the statute uses, your Honor.

I think it might be helpful, your Honor, if I read the statute which is the basis for discussion here, which sets forth these qualifications.

"In any court of the United States and in any court established by an act of Congress"—

Hearing Examiner Kolb: That's all right, I will read it to myself. I have a copy of it.

Off the record.

75 (Discussion off the record.)

Hearing Examiner Kolb: On the record.

The following documents are received in evidence: Commission's Exhibits 13-A and B, 73, 89A and B, 93, 94 and 95.

Mr. Hays: They are received without objection, I take it.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The documents are received.

(The documents referred to, heretofore marked Commission's Exhibits 13-A and B, 73, 89-A and B, 93, 94 and 95 for identification, were received in evidence.)

Hearing Examiner Kolb: Do you have any further questions of Mr. Kennedy?

Mr. Hays: Yes. I just wanted to look at more of these documents.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

As the record now stands, I believe those exhibits have been received in evidence without objection. Do you wish to make any further objections?

76 Mr. Walker: Yes, if your Honor please, we object to the retention in evidence of Exhibits 13-A and B, 73, 89-A and B, 93, 94 and 95 on the grounds of the hearsay rule.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The objection is overruled. The documents are received in evidence.

Mr. Hays: May I also state that we are offering these to

show, and they are admissible to show the company policy, and, as such—

Hearing Examiner Kolb: This has nothing to do with the Federal Shop Book rule. It is a question of correspondence which has been received in evidence and written as identified by the witness.

Mr. Hays: Very well. Now, with reference to those that were withdrawn, in order that I may know now to proceed, may I have a ruling with reference to the position that they are indicative of company policy, the particular policy which is the subject of this complaint, that is, the ability of Consolidated Foods to induce its suppliers of food products to buy dry food seasoning from Gentry?

77 Hearing Examiner Kolb: Well, that might come in as a question of general admissibility of the document as to its relevancy and materiality, but I don't believe it would come in as an admissibility proposition.

Mr. Hays: I am offering that as an exception to the hearsay rule to show company policy in this particular instance.

Hearing Examiner Kolb: You can't offer a document to show policy without identifying it.

Mr. Hays: Well, it's been identified. If it has been identified, it is my position that, in itself, shows the company policy with reference to this particular action.

Hearing Examiner Kolb: They are not waiving the witness being on the stand to identify the letters, as I understand it.

Mr. Walker: No, sir, we are not.

Mr. Hays: Well, doesn't your stipulation include the fact that it was sent or received as indicated thereon?

Mr. Owen: That is correct.

Mr. Walker: That is right.

Mr. Hays: By the people thereon?

Mr. Owen: Correct.

Mr. Hays: All right. In other words, that you authenticate it. Now, if it shows a part of the company policy, I submit it is an exception to the hearsay rule.

78 Mr. Walker: Well, whether or not that was the company policy, your Honor, is one of the facts which is in litigation here, and which will be determined by the court, and it seems to me it is lifting yourself up by the bootstraps to say that you can get a document in evidence merely on the basis of what it shows on its face. I know of no such exception to the hearsay rule.

Hearing Examiner Kolb: The document may or may not show company policy. That is for me to determine.

Mr. Hays: That is correct, sir. We submit that it does.

Hearing Examiner Kolb: And the mere statement by you that you are offering it to show policy is not sufficient.

Mr. Hays: I see.

Hearing Examiner Kolb: I am kind of confused, though, about this stipulation, whether or not that is sufficient.

Mr. Walker: I do not see how it can be sufficient, your Honor, because to put the documents in evidence without having them identified by the persons who are concerned with them, you by-pass entirely this question of authority that we have been discussing.

Hearing Examiner Kolb: Well, you have stated that you would be willing to admit these documents came

79 from the Gentry files, that they were written by the parties as stated, and were received by the parties they were directed to.

Mr. Walker: That is right.

Hearing Examiner Kolb: That is all Mr. Kennedy has testified to here.

Mr. Walker: Well, he can't identify the documents themselves as being personally involved, your Honor—

Hearing Examiner Kolb: All he has testified to is that these are letters which he wrote to the parties to whom they

were addressed and others were letters written to him by the parties who sent them.

Mr. Walker: But he is the president of the company and he obviously has this authority we are talking about.

Hearing Examiner Kolb: No, we are getting authority in this thing mixed in the wrong place.

I think if you put the man on the stand who wrote the letter or received the letter, and he identifies that as being a letter written or received, then it is admissible in evidence. The question of authority is a matter, then, of defense.

Mr. Walker: I submit, your Honor, for the reasons that we have stated before that this is a matter of the bur-
80 den which is on the party who places the matter in evidence.

Hearing Examiner Kolb: I am talking if it comes within the general relevancy of the proceedings—if a letter itself is relevant to a proceeding and material—we are not talking about the Shop Rule Book—that is out of the picture entirely under this present procedure, as I understand it.

Mr. Walker: Well, your Honor, if you had a document, for example, that was written by somebody who was without any authority relationship to Consolidated whatsoever, even though it mentioned facts which might have something to do with this proceeding, that, alone, would not be sufficient to place it in evidence. There would have to be some kind of a showing that this document was, if you will, written by somebody who had authority to do it. We couldn't just have strangers' documents come into the record.

Hearing Examiner Kolb: We are not talking about strangers' documents. We are talking about documents written by inter-office communications.

Mr. Walker: Yes, and I am suggesting—

Hearing Examiner Kolb: Inter-division letters.

Mr. Walker: I am suggesting that the same thing is true

as to people within the organization who do not have
81 the authority in the area with which we are concerned.

Hearing Examiner Kolb: I think that is a matter of defense. If you show that the man who is in one division writes to another division, and those letters are kept, or make it appear to be kept in the ordinary course of business, or the witness would testify that it was kept in the ordinary course of business by him, now the question of whether or not that man had authority to make the statement is a matter of defense.

Mr. Walker: If we had testimony that these records are made in the regular course of business, then I would have no quarrel with it at all, but we do not have any evidence on that score whatsoever, and that is my whole trouble with all of these documents going into evidence.

Hearing Examiner Kolb: Don't you think that any letters which you have in your files, which are in the Gentry Division, which are written by various division heads, or members of the division, or salesmen, are written in the ordinary course of business?

Mr. Walker: No, sir.

Hearing Examiner Kolb: Such as the present records of your company because you keep them in your files.

Mr. Walker: No, sir, not if an employee goes on a frolic of his own.

82 Hearing Examiner Kolb: I am not going so far as to say because they are in the file that makes them admissible. I think you have to have that man identify it or else waive that identification, whichever you want to do, but if a man testifies that that letter was written by Sam Jones, and Sam Jones was a salesman and that is the sort of report he makes—

Mr. Walker: Then, your Honor, I would agree with you one hundred per cent if you get that evidence in the record. Then we would have no problem here, but we have none of

that evidence relating to any of the documents except those that Mr. Kennedy testified were written and received in the regular course of business.

Until we get that showing with the other documents, we have no foundation whatsoever.

Mr. Hays: The trouble here is that we are in Chicago and most of these people are in California. That is the main thing.

Mr. Owen: I don't know whether it satisfies what you have in mind, Mr. Examiner, but we have stipulated that these letters were written by whom they were purported to be written by and received by the people by whom they are purported to have been received, and they came from the Gentry file, and our objection to them is that they are hearsay so far as anything recited therein, any state-

83 ment of fact, until you get witnesses on the stand.

We are not denying that they were received by people who were either in the employ, or officers of the company, or that they were sent by people who are in the employ of the company.

If your Honor believes that over our objection these should come in, that is your privilege, of course.

Hearing Examiner Kolb: My point is this, Mr. Owen, as I understand your statement, if they put a witness on the stand, and he testifies that he received this letter, then that becomes—provided it covers the general qualifications of relevancy to this entire matter, it then becomes admissible subject to your objection as to hearsay, which I have overruled so far as Mr. Kennedy is concerned, and I assume I would overrule it in other instances.

Mr. Owen: I think that is where we are, exactly where we are.

Hearing Examiner Kolb: Then why are we going around in circles? Why can't we admit these documents over your

objection on hearsay? Do you waive the production of a man to testify that he received a letter or wrote it?

Mr. Walker: Yes, your Honor, so far as receiving and writing is concerned, but the other factor that you mentioned earlier that it was written or received in the
84 regular course of business is something that we do not believe can be satisfied as to these documents, and that is our trouble.

Some of these people, just as I say, on a frolic of their own, wrote some of these documents.

Hearing Examiner Kolb: It is hard for me to believe that any man would testify that those letters were not written in the ordinary course of business.

Mr. Owen: I think we can demonstrate it.

Mr. Walker: I believe we can. Otherwise, we would not be interposing these objections.

Mr. Hays: Any particular one, or all of them?

Mr. Walker: Well, obviously, the ones that we have already mentioned by Mr. Kennedy or by the president of Gentry, or people who are in responsible positions whose authority goes along with their position, there is not going to be any problem with. It is the letters written by these employes.

Mr. Hays: You mean Mr. Farrell?

Mr. Walker: Mr. Farrell, Mr. Kraham, Mr. Oscar Schek, and people of that—

Mr. Owen: May I go a step further. I would like you to know, Mr. Hays, that so far as the division is concerned, that it is subject to the central control, and the vice-
85 presidents out there are subject to central control like everybody else is, and they have no independent offices in the corporation as corporate officers. They may be autonomous in the sense of operations, but they have no standing as officers of the corporation. They are divisional officers, and they obey the executive committee and they

obey the president of the corporation, and if they step beyond the scope of their authority, they are just like a salesman.

Hearing Examiner Kolb: How about these letters to and from Mr. Bellisime?

Mr. Walker: Mr. Bellisime? Yes. Certainly—

Hearing Examiner Kolb: Mr. Bellisime is an officer.

Mr. Walker: Certainly as to the letters written by Mr. Bellisime there can be no problem unless he goes beyond the authority that is given him by the president of Consolidated. If he does, he is in no different position than the salesman.

Hearing Examiner Kolb: If we had Mr. Bellisime on the stand, and letters were presented to him and he testified that they were written by him, and that these letters which. which [sic] were received were received by him—

Mr. Owen: Then I think you would have the same problem.

86 Hearing Examiner Kolb: And I received them in evidence over your objection as to the hearsay statements—

Mr. Walker: But I think there must also be a showing, as you mentioned earlier yourself, sir, that these letters were written and received in the regular course of business as Mr. Kennedy established—

Hearing Examiner Kolb: I don't think Mr. Kennedy or his company would carry a lot of correspondence in his file that wouldn't be in the ordinary course of business.

Mr. Owen: May I say something on that. Maybe we are confusing you, Mr. Examiner, and we don't want to. There is absolutely no practice in this corporation or regular course of business of recording calls on customers saying we have put the screws on them. Now, if anybody here thinks that they can establish that either in the west coast or here that it is in the regular course of business for salesmen of Gentry or Consolidated to write letters and record

the fact that he purportedly put the screws on somebody, then that is just not correct. We did not in any sense have an established practice of putting screws on anybody, or of recording the fact in any way by letters or by other reports. That is a very simple statement and it is perfectly understandable.

Mr. Hays: You don't then deny the authority with reference to reciprocity?

Mr. Owen: We do not.

87 Mr. Hays: In other words, it is a question of degree.

Mr. Owen: It is a question of degree which, whether we are right or wrong, think goes to the heart of the discussion.

Hearing Examiner Kolb: I think, Mr. Owen, you admit salesmen do make reports?

Mr. Owen: I surely do, of sales.

Hearing Examiner Kolb: And reports of salesmen would be considered made in the ordinary course of business and would be admissible in evidence. He may have said he put the screws on somebody or something of that sort—

Mr. Owen: That would not be in the ordinary course to do it or report it.

* * *

By Mr. Hays:

Q. I hand you Commission's Exhibit 13-A and 13-B, Mr. Kennedy, and ask you to state the facts with reference to the subject matter contained therein, that is, for what purpose was that letter written?

A. Well, this is written by Mr. Farrell, dated March 2, 1953 and—

88 Mr. Walker: Excuse me, I shall have to object to the question. I don't like to be this way, your Honor, in raising these objections, but I don't see how this witness can testify to the purpose which Mr. Farrell or somebody else had in mind when he wrote a letter to him.

Mr. Hays: I withdraw the question.

By Mr. Hays:

Q. Does anything in that letter reflect a policy of the company, a business policy of the company?

A. No, sir.

Q. There is nothing in there with reference to a business policy?

A. This is a letter written by a salesman to me, and they like to write to me to get their name in the reports. This does not reflect the policy of our company.

Q. What part in there does not reflect the policy?

A. Putting any pressure other than normal reciprocity. We have never put the screws on anybody as Mr. Owen said here, and that has not been a fact.

Q. Is there anything in this letter about putting screws on anybody?

A. He tells about a number of customers there that he would like for me to contact, which I did not do.

Q. But there is nothing in there about putting the screws on anybody?

89 A. It is intimated that these people might be customers of ours, and also that they might buy Gentry products. I did not acknowledge this letter, and it is merely a statement from a salesman that he would like to sell these people.

Q. Now, does your company have a policy of reciprocity?

A. We see nothing wrong in soliciting business in the normal way, and we think that a customer that buys from us would, everything being equal, at least give us a hearing, and that is what he was asking for there.

Q. When you say "give us a hearing," you mean buy dried food seasoning from your Gentry division?

A. No, consider the product—the quality—the price; and the service.

Q. And ultimately buy it?

A. Not necessarily; we hope so.

Q. That is the purpose?

A. We hope so, but we have no assurance.

Q. You have no assurance that he would buy, but that is the doctrine of reciprocity that is referred to, is that correct?

A. That is right. I think that is generally accepted in business.

Q. Now, the accounts that are referred to in Commission's Exhibit 13-A and 13-B are accounts that Mr. Farrell was looking to with a view of reciprocity, is that correct?

90

A. I would gather that he is looking for business. I did not acknowledge this letter. I get hundreds of letters a day, and it doesn't necessarily state a company policy. He is just keeping me informed.

Q. But, as a matter of fact, you did believe in this doctrine of reciprocity, is that true?

A. I see no harm as long as it doesn't go beyond the normal course of business.

Q. Now, I hand you Commission's Exhibit 94. Insofar as the Phillips Packing Company is referred to in that document, that was the company where you attempted reciprocity, is that correct.

A. This is a letter written—that I wrote to Mr. Bellisime where they were asking for business from us. It works both ways.

Q. But you had obtained business from them for your Gentry Division, is that correct?

A. I don't think so. I don't know—there was an order in one of these documents here that he received for a thousand pounds which is unimportant, a token order. I don't know whether it was before or after this.

Q. I hand you Commission's Exhibit 93, which I think indicates the circumstances under which that thousand pound order was obtained?

91

A. This was July 7, 1952? This was acknowledged in receipt of his letter of July 10th.

Q. Now, Commission's Exhibit 93 is indicative of Consolidated Foods' policy with reference to reciprocity, is that correct?

Mr. Owen: I object to the characterization of there being any policy involved in any of this.

Hearing Examiner Kolb: Objection overruled.

Mr. Hays: He stated he had a policy.

Mr. Owen: I object to that remark. Your Honor, may I have a ruling on that? I don't want this man to put words in the witness' mouth, or try to establish here through his testimony that there was any policy involved. If he can establish it through the witness, let him do it.

Hearing Examiner Kolb: Well, counsel, remarks are not evidence so there is no necessity of striking it.

Mr. Hays: Will you read the question, please?

(Question read)

Mr. Owen: Your Honor, I object to the witness' answer and that question.

Hearing Examiner Kolb: Objection overruled. You may answer.

The Witness: Would you mind repeating that question again?

92 (Question read)

The Witness: Indicative? I would say no. There are cases where the salesmen solicit business, and the matter was then referred to us—I mean, we were advised that they were soliciting business. I personally did nothing about it. I did not contact the Phillips people or anyone connected with the Phillips Company.

The fact that he wrote doesn't necessarily state the company policy in this connection. He is out there looking for business, and we hope he gets business. As long as he doesn't use pressure, we see nothing too wrong with it.

By Mr. Hays:

Q. I don't believe that is responsive. Is there anything in this Commission's Exhibit 93 that indicates pressure was used?

A. No, sir, I don't see any.

Q. Well then, isn't that indicative of the company's policy with reference to reciprocity? Isn't that an example of the company policy with reference to reciprocity?

A. You mean with all of our customers? No. There might be an odd customer where the salesman called, and the question came up of either our buying from them or they buying from us, but that did not indicate a com-
93 pany policy. If they wanted to reciprocate that was all right with us, but we did not use or no one representing Gentry had authority to threaten that we would discontinue buying from that customer if they didn't buy Gentry merchandise.

Q. Is there anything in this Commission's Exhibit 93 that indicates a threat was made?

A. No, sir.

Q. Well, my question is directed to the company policy of reciprocity which I believe you stated you had, is that correct?

A. I said as a company policy we see nothing wrong with reciprocity so long as it is within the bounds of good business. Our customers solicit us on that basis, if they buy from Gentry, and, naturally, our salesmen call that to the attention of our customer, but that doesn't necessarily mean that we have a policy of reciprocity there to a point where if he doesn't perform that we will discontinue buying from him. That has never been tolerated, and it has never been done where we cut a customer out because he didn't buy our product.

Q. Now, this reciprocity to which you refer, as you stated, I believe, and correct me if I am wrong, means that you will go to your suppliers of food products, and ask

them to consider purchasing your dried food seasonings, Gentry dried food seasonings, and you are hopeful that
94 they will purchase your Gentry dried food seasonings, is that correct?

A. You are speaking now in a general broad term?

Q. Yes?

A. We go to all of our customers? No. There might be exceptions where a salesman has not sold a certain customer or his business has not been what he thought it should be and he thinks that they may use them, but that doesn't necessarily state a company policy. We see nothing wrong with the odd case where a customer reciprocates, and that works both ways. They may ask us for business. As long as there is no threat to use force to discontinue the business, and, as a matter of fact, they would have no authority to threaten. That is entirely out of the department authority.

Q. Now, with reference to reciprocity, as you have just described it, doesn't Commission's Exhibit 93, isn't that an example of reciprocity and what happened in the case of the Phillips Packing Company?

A. It so developed that they did buy some merchandise from us, that is true, and we were buying from them, but there wasn't no pressure put on through Consolidated. I have never contacted those people with reference to doing business with Gentry. I received the letter like I receive hundreds of others. I did not—I did acknowledge that one, but that doesn't necessarily state company policy.

95 Q. You stated there was no pressure put on?

A. That is right.

Q. Now, there has been a lot of talk here today about personal knowledge. You don't know for a fact just what went on between your salesmen and Consolidated Grocers, do you, and Phillips Packing Company?

A. You mean all of the conversations?

Q. Yes?

A. No, I wasn't present at the time, but it does indicate there that they were reaching for business from Consolidated, and it was good business on their part probably to give them a token order, as they did.

Q. In other words, you had—you bought the type of material or type of food products that Phillips Packing Company sold, is that correct?

A. In a limited way.

Q. Now we will go to another subject. Can you tell us the history of Consolidated Foods from its original date of incorporation which was September 4, 1941, in the State of Maryland as the South Street Company—is that correct?

A. Yes.

Q. Will you describe its development since that day?

A. Well, that company was established to take over a going business known as the C. D. Kenny Company of Baltimore City. The name was immediately changed to—

96 Mr. Walker: May I interpose an objection here? I don't see the relevance of how Consolidated was organized, or anything else in relationship to the prior history of Consolidated except what Consolidated was at the time it acquired Gentry.

Hearing Examiner Kolb: Objection overruled.

Mr. Walker: Go ahead.

The Witness: From the beginning in Baltimore, it was a wholesale grocery house, and a food processing operation, and we expanded and acquired the Sprague Warner Division in 1942.

Mr. Walker: Your Honor, in accordance with what we said before, I will have to object and move to strike the witness' testimony relating to acquisitions other than the acquisition that is here in issue.

Hearing Examiner Kolb: You may have a standing objection to the testimony as to other acquisitions.

Mr. Walker: Without the necessity of renewing it?

Hearing Examiner Kolb: And it will be overruled.

Mr. Walker: Go ahead.

The Witness: That was in 1942 that we joined forces with Sprague Warner, a company in Chicago. In 1944 we purchased the Western Grocery Company in Iowa, and Marshall Canning Company which was a subsidiary of Western.

97 They, too, were wholesale food distributors and canners. In the same year, and I am quoting from memory here, we acquired the Dannemiller Division at Canton, Ohio. In 1945 we expanded our business here in Chicago and acquired the Reid Murdoch Company. They have branches throughout the country, and canning plants located in the growing areas.

I think the next acquisition was Lee Foods of Kansas City. They were wholesale grocers, and food processors.

Mr. Owen: Your Honor, would it be disruptive if I asked or suggested that the question asked the witness be read to the witness?

Hearing Examiner Kolb: He is answering the question.

Mr. Owen: I don't believe so.

Hearing Examiner Kolb: He asked him to develop the company from that time on.

Mr. Owen: I hear nothing but acquisitions. Is that all we did?

The Witness: We operated and developed these companies.

Mr. Owen: Did you do any operating in between?

The Witness: Yes, very much so.

98 Do you want each individual division, or do you want me to tell you the general scope of Consolidated's business?

By Mr. Hays:

Q. Well, have you concluded your answer with reference to—have you brought the company up to date?

A. No.

Q. Will you continue to bring it up to date, and then I will have a question with reference to Consolidated, what it does today?

A. Well, I think that brings us down to Lee Foods in Kansas City. Then, in 1951 we acquired the Gentry Division of Los Angeles, and the Union Sugar Company in California, the U. S. Products Company all in that one year, and all in California.

I think, just prior to that, in 1950 I suppose it was, we acquired Rosenberg Bros. & Company of San Francisco.

Down to date, we acquired the E. A. Aaron & Bros. Company, and their distributors of frozen foods in Chicago. Next, Ocoma Foods of Omaha. That came into the organization in 1955; in the same year, Piggly Piggly Midwest Company chain store organization.

The Kitchens of Sara Lee joined forces with us in 1956, Klein Super Market in the same year, and going back to 1955, the Morey Mercantile Company of Denver became
99 part of the Consolidated Foods organization. The Coastal Foods of Cambridge, Maryland came into the picture in 1957.

I think that makes up the eighteen or nineteen divisions and our subsidiaries of our company.

Q. I hand you Commission's Exhibit No. 1, page 16, on which are indicated the canning and processing operations and distributing operations of Consolidated Foods, and I ask you to state whether there have been any changes, additions or subtractions there from since the time that report was published?

A. The Consolidated Food Processors, the first on the list here, was consolidated with Monarch Foods, Canners and Processors. That takes in the distributing branches, as well as the processing plants.

Q. Is that a separate corporation now or a division?

A. A division. The Marshall Canning Division is part of the Monarch Foods Canners and Processors. That continues as a division; it was always a division.

Gentry Division continues as a division. Gibbs & Company was consolidated with Coastal Foods in Cambridge. Rosenberg Bros. & Company is incorporated. It is still in operation in San Francisco.

Union Sugar Company is a division in California. U. S. Products Corporation is a canning organization in California.

E. A. Aaron & Bros. is a distributor of frozen foods. Dannemiller Grocery is a distributing division. Griggs Cooper has since been sold, and we no longer have an interest in it.

The International Division was a separate division established to handle exports, headquartered in San Francisco. Lee Foods Division operates in Kansas City. It is an institutional wholesale distributing business.

Monarch Finer Foods represents branches scattered throughout the east and middle west. They are wholesale food distributors.

The Sprague Warner Division, Chicago, is a wholesale food distributor. Western Grocer Division is a wholesale food distributor.

That does not include all the acquisitions. It brings us up to 1955, June 30th.

Q. Have there been any other changes since 1955?

A. In these particular divisions, no.

Q. Is there any change in the company set-up as you have given it today? Has there been any change between April 1, 1951 and the present time since Gentry came—since you acquired Gentry?

Mr. Walker: I don't understand the question, Mr. Ex-

aminer. We have already had the witness testify to a
101 number of things that happened.

Hearing Examiner Kolb: He has testified to several acquisitions since that time.

Mr. Hays: Well, I know that the answer will probably be yes, and I would like to know—my next question would then be what were the divisions in existence at the time of the Gentry acquisition.

The Witness: Well, Consolidated Food Processors, Marshall Canning Division, Rosenberg, Dannemiller, the Lee Foods, Monarch Finer Foods Division, Sprague Warner and Western Grocers.

By Mr. Hays:

Q. Those were in existence April 1, 1951?

A. Right.

Q. Describe the operation of Consolidated Food Processors Division?

A. Consolidated Foods operates —

Mr. Walker: Excuse me, I don't think the witness understands the question. The question was Consolidated Foods Processors, Inc., Mr. Kennedy.

The Witness: Oh.

Mr. Hays: Yes.

The Witness: Consolidated Foods Processors, Inc., was set up as a separate corporation some five years ago, six
years ago, to take over the canning operation of the
102 Reid Murdoch Division and the Marshall Canning Division. They have plants located throughout the growing areas.

Q. What kind of canning does that division do?

A. They can fruits, vegetables, what we call dry merchandise—beans and rice—that is about it. The category of fruits and vegetables covers it.

Q. What is done with the product that they process?

A. That is sold to our own distributing divisions, and to outsiders.

Q. To your own distributing divisions? Which divisions distribute those products?

A. All of the wholesale divisions, plus the chain store divisions, subsidiaries.

Q. That would be those companies listed on page 16 of Commission's Exhibit 1 under distributing operations?

A. Right.

Q. I take it the Marshall Canning Division does the same type of thing?

A. That is part of it. It is a division of Consolidated Food Processors, Inc.

Q. Does it do the same thing?

A. The same thing, yes. They sell to our own divisions and to outsiders.

Q. Briefly describe the operation of the Gentry Divi-
103 sion?

A. The Gentry Division supplies-produces onion and garlic flakes and powders, dehydrated states, and capsicums.

Q. I beg your pardon?

A. Capsicum—that is the chili, and the ground paprika, and items referred to generally as capsicum.

Q. Now, what does Gibbs & Company do?

A. They can vegetables and dry pack merchandise.

Q. Is the product also sold through your distributing divisions?

A. Yes, we sell both our distributing divisions and to outsiders.

Q. And you sell to outsiders through brokers, or direct?

A. Through brokers and through direct salesmen, both.

Q. Chain stores?

A. Yes.

Q. What does Rosenberg Bros. do?

A. They are dried fruits, nuts, raisins. That about covers it.

Q. And their product is similarly distributed by your operations and through others?

A. A very small percentage is sold to our own divisions; mostly outside.

Q. What does the Union Sugar Division do?

A. They process beet sugar. We buy a very limited amount from them. They sell to outsiders.

104 Q. What does the United States Products Corporation do?

A. They produce canned fruits and vegetables in California, and sell both to our own units, and to outside customers.

Q. Now, your distributing operations obtain a part of their—what they distribute from your processing operations, is that correct?

A. That is right.

Q. Do they obtain another part of what they buy from others?

A. Yes.

Q. Is that which they buy from others canned under the buyer label or your label?

A. Both.

Q. Now, what is E. A. Aaron Bros.?

A. They are frozen food distributors.

Q. They don't have any retail outlets?

A. No.

Q. And they distribute to food stores and chains?

A. To food stores and institutional users.

Q. What is the Dannemiller Grocery Division?

A. They are a wholesale grocery operation in Canton, Ohio.

Q. And they sell to retail food stores in that area?

A. And institutions, yes.

105 Q. What is the Griggs Cooper Division?

A. The Griggs Cooper Division has been sold.

Q. I will withdraw the question. What is the International Division?

A. They sell all grocery products to foreign customers.

Q. What does Lee Foods do?

A. They are a wholesale institutional house. They don't sell retail.

Q. They sell to wholesale houses?

A. Wholesale institutional accounts.

Q. I see.

A. They only sell to hotels, restaurants and institutional accounts.

Q. And they sell food products?

A. Food products.

Q. What is the Monarch Finer Foods Division?

A. They sell—they are a wholesale operation. They sell to retail accounts, and also to institutional users.

Q. What is the SpragueWarner Division?

A. The same.

Q. And what is the Western Grocer Division?

A. The same.

Q. What brand labels do you use on your food products?

A. Our most widely used brand is Monarch. We have, in addition, the Richelieu brand, the Jack Sprat brand,
106 Lee brand, Solitaire brand, Black and White brand. Those are not too important, those last few.

Q. Now, which of these brands are used by others that process for you and put that brand on the product?

A. They are all bought from our own processing houses as well as outside processing houses—canners.

Q. What types of products are sold under these labels?

A. Complete line of canned fruits and vegetables, package flours, some soap products, and the general grocery line.

Q. Do any of these products contain the type of dried food seasonings that Gentry sells?

A. Some processors use in their processing produced [sic] produced by Gentry, yes.

Q. Some of your processors?

A. Some of our own processors and some of the outside processors, such as meat products.

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107 Chicago, Illinois
April 30, 1958

108 PROCEEDINGS

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Mr. Hays: Mr. Kennedy, please resume the stand.

• • •

Q. Yesterday we went into the various subsidiaries and divisions of Consolidated Foods Corporation and what they did.

Does Consolidated Foods Corporation itself do anything except through the subsidiaries and divisions that you already described?

A. No, we do the financing. We act as financiers for the division, but we do not operate out of headquarters or executive office. The division is operated—the divisions operate individually.

Q. Does Consolidated Foods lay down any overall policies or coordinate any activities of divisions and subsidiaries?

A. Yes, sir.

109 Q. To what extent?

A. We are in on all major decisions affecting operations, whether it is division or subsidiaries.

Q. Does that include selling operation and sales policies of the various divisions?

A. In a general way.

Q. Does it include buying policies of the various subsidiaries and divisions?

A. Yes, sir.

Q. Who are the officers of Consolidated Foods Corporation; how long have they held that position?

A. Mr. Cummings is Chairman of the Board and President. Mr. Gifford is Vice President and Secretary. Mr. Everts. E-v-e-r-t-s, is Vice President and Treasurer.

We have a number of additional vice presidents heading various departments, including Mr. Lerner, who is Vice President and Director of Purchases, who works directly under the executive office.

I don't have a list of all the vice presidents in front of me, but they are the important operating vice presidents.

Q. How long have they held those positions—at least since April 1st, 1951?

A. No, Mr. Cummings and I have been in the same position since '51. Mr. Gifford was elected vice president and treasurer some four years ago, three years ago, 110 and Mr. Everts about the same time.

Mr. Lerner has been a vice president of the corporation about two years.

Q. Who preceded Mr. Lerner in his present position?

A. Mr. Leo Russell.

Q. Is he with the company now?

A. He is not with the company now.

Q. Who are the heads of the various operating divisions and the subsidiaries?

A. I have to refer to my list here. We have about 19 of them.

Coastal Foods—you want beyond the president?

Q. The one directly in charge.

A. Mr. James Glover, G-l-o-v-e-r — he is the Executive Vice President and General Manager.

The Gentry Division's is Dr. Arthur Prater.

Mr. Owen: Counsel, may I interrupt? I think that to keep the record clear, the distinction needs to be made between the offices of Consolidated Foods Corporation,

which are corporate offices, and the offices of the divisions which are not corporate offices, so when he says executive vice president there, I believe he is referring to, in connection with the division.

By Mr. Hays:

Q. If he will so state. Is that true of all the subsidiaries?

A. Yes. Their authority is confined to their own division or subsidiary.

Q. Thank you.

A. They have no authority to speak for Consolidated Foods.

Q. Thank you.

A. The Union Sugar Company, Roland Tognazzini, T-o-g-n-a-z-z-i-n-i; Dannemiller Grocery Company, Mr. Reinhart; International Division, Mr. Horn; Lee Foods, Mr. Schaffer; Monarch Foods, canners and processers, Mr. Wilford; Monarch Finer Foods, Mr. Van Natta; Central Distributing Division, Mr. Perlitz, P-e-r-l-i-t-z; Morey Mercantile Company, Mr. Bischman, B-i-s-c-h-m-a-n; Western Grocery Company, Mr. Moore; Rosenberg Brothers, Mr. Howlett, H-o-w-l-e-t-t; U.S. United States Products Corporation, Limited, Mr. Drew, D-r-e-w; E. A. Aaron Brothers, Mr. O'Brien; Ocoma Foods Company, Mr. Kohorn; Piggly-Wiggly Division of Midwest Company, Mr. Kramlich; Kitchens of Sara Lee, Mr. Lubin; and Klein Super Markets, Mr. Klein.

Q. How long has Mr. Prater held his position in charge of Gentry Division?

A. He was elected Executive Vice President and then later, and he was the nonlinal head of the business during his term as Executive Vice President, and later as president.

I would say he was elected Executive Vice President in '56 and President in '57.

Q. Who preceded him as the person in charge of the 112 Gentry Division?

A. Mr. Bellisime, B-e-l-l-e-s-e-i-m.

Mr. Walker: B-e-l-l-i-s-i-m-e — excuse me.

The Witness: Right.

By Mr. Hays:

Q. How long did he hold that position?

A. He was, he held that position for, for the period from about '52 to '55.

Q. He was then followed by Mr. Prater?

A. He was followed by Mr. Prater.

Q. And he was preceded by Mr. George Clausen, C-l-a-u-s-e-n?

A. Yes, George Clausen was President.

Q. What was the extent of the authority of Mr. Clausen?

A. He was in charge of Gentry operations.

Q. Was that he had a general authority to carry on the operations of the Gentry Division?

A. Of the Gentry Division.

Q. Were there any limitations on that authority?

A. Only on overall policies that we would rule on at headquarters.

Q. What types of policies were those, sir?

A. On the question of expenditures for additional equipment. We might get into the discussion of acreage we contracted for, growing acreage.

Mr. Walker: I am sorry, Mr. Kennedy. I can't quite 113 hear you. Will you speak up a little bit?

The Witness: Yes. I said we get into the picture when it comes to any unusual transaction, such as a capital expenditure or contracting for growing acreage, and anything that is major.

By Mr. Hays:

Q. Did he have authority to formulate the sales policies of the Gentry Division?

A. He was in charge of the sales department. He was in charge of the sales force.

Q. Were any limitations placed on his authority in so far as the operations of the sales force was concerned?

A. We would discuss and review with him the results of some of his sales organization, make recommendations.

Q. If they, if the results were satisfactory, did you allow him to continue without any further instructions?

A. We discussed these problems with Mr. Clausen and the heads of all the other divisions and subsidiaries. We keep close touch with our operating people and we are in on these major decisions that affect the operations of the division or the subsidiary.

Q. Is the authority that you have described in reference to Mr. Clausen the same type of authority that was given to Mr. Bellisime and Mr. Prater?

A. Yes.

114 Q. And those three gentlemen, when they held that office, were responsible directly to you, were they, sir?

A. I would say yes. Actually the Board of Directors. The Board of Directors appointed the officers and they report to me, and I report to the Board.

Q. During the time that these three gentlemen held office, did you issue any instructions to them with reference to the extent that they could delegate, that each of them could delegate a sales policy, the carrying out of a sales policy, to a subordinate?

A. We discussed, we discussed all those problems periodically. We don't attempt to say who they should hire or fire, but we do review the results and we insist on each member of the organization doing his part, but it is through the president of the company, of the division.

Q. In other words, he has general overall authority to delegate functions, sales functions, to various individuals?

A. That is right.

Q. And he did have—each of these men did have that authority during the time they served?

A. Yes, they had authority. We are kept advised as to progress being made.

Q. But they did have the authority?

A. Yes, they had.

Q. To delegate responsibilities in the carrying out of sales policies to subordinates, is that correct?

115 A. That is right.

Q. Did you have anything to do with the acquisition of Gentry Incorporated by Consolidated Foods?

A. I think the first approach was made to my office, and later on we discussed it in a committee, and some gentlemen went to California to further discuss the matter. I did not go to California and I was not present when the contract was signed, but I was kept informed of the discussions.

Q. When did this first approach take place?

A. I would say probably 60 days prior to the signing of the contract, March 31, 1951.

Who made that approach?

A. Mr. Vernon Carroll made the first approach.

Q. Who is he?

A. He is with an investment banker in the Rookery Building. I just forget the name.

Q. Did he talk to you?

A. Yes.

Mr. Owen: Mr. Kennedy—may I try to refresh his recollection—maybe you would like it?

Mr. Hays: Yes, I want the facts correct.

Mr. Owen: Wasn't it Rodman and Renshaw?

The Witness: Renshaw was one of the names.

Mr. Owen: Rodman. Well, Renshaw was one of the names, is that correct?

116 The Witness: Yes.

Mr. Owen: O.K.

By Mr. Hays:

Q. The individual was Mr. Carroll?

A. Vernon Carroll, yes.

Q. Yes, and were you in the market for a business such as Gentry at this time? Had you been looking around?

A. No. We are always willing to look at any proposition that offers an opportunity to make a good investment.

Q. Did you have any other business at that time similar to the business conducted by Gentry, Incorporated?

A. No, sir.

Q. Entirely different from your operation at that time?

A. That is right.

Q. And what was the substance of the approach by Mr. Carroll?

A. Well, he advised us that he had been contacted by some Los Angeles people to the effect that the Gentry business could be acquired.

He submitted some figures. They looked good to us and we pursued the matter.

Q. Did you or anyone in Consolidated Foods make an investigation of Gentry, Incorporated, after the initial approach?

A. We sent our man from San Francisco down to look over the physical properties and to meet the organization.

117 Q. Who was the man from San Francisco?

A. Mr. James Keenan.

Q. K-e-e-n-a-n?

A. Yes, sir.

Q. Is he still with your company?

A. He has passed away.

Q. He is dead?

A. Yes.

Q. At the time he made the investigation, what was his position with Consolidated Foods?

A. Vice President of Consolidated Foods.

Q. Did he transmit to you a summary of his investigation or report of his investigation?

A. He gave it to me verbally over the phone. I don't believe he submitted a written report.

Mr. Walker: I am sorry. I can't hear you.

The Witness: I don't believe he submitted a written report. He gave it to me verbally over the phone.

By Mr. Hays:

Q. What did that investigation cover?

A. A meeting of the organization, a very casual review of the industry and the inspection of the properties.

Q. And what did his review of the industry consist of?

A. I don't think that he—he didn't get into it that deep.

Q. He did make a casual review of the industry?

118 A. Of the products they handled and the type of business they were doing; who they were selling to. He did not make a survey of the industry, no.

Q. He did not make an industry survey?

A. No.

Q. Did he obtain any general facts about the competitive situations existing in the industry.

A. No, no, he did not.

Q. Did you know what the competitive facts were with reference to the industry at that time?

A. I had a general idea through discussing the matter with Mr. Keenan and also with Mr. Carroll.

Q. After you received this report from Mr. Carroll—Mr. Keenan.

A. Keenan.

Q. Keenan, I believe, what did you then do?

A. Several of our men went to Los Angeles and discussed the matter with Mr. Clausen and his associates.

Q. Which of your men went to Los Angeles?

A. Mr. Cummings, Mr. Owen, Mr. Madden.
Q. Mr. Owen is the Mr. Anderson Owen here?
A. Right.
Q. And who is Mr. Madden?
A. Mr. Madden was our former treasurer.
Q. He is no longer with the company?
119 A. That is right.
Q. Do you know what the basis of that discussion was?
A. They analyzed—

Mr. Walker: I am going to object, your Honor, unless there is a little more foundation here. When the question is asked, it is asked for pure hearsay, since Mr. Kennedy testified he wasn't present during the discussions.

Hearing Examiner Kolb: Mr. Kennedy can testify what he knows.

Mr. Walker: Yes, but I want to make sure the question is directed to what he knows and find out how he knows before we go into it.

The Witness: Well, I was not present and any information I would have would be hearsay.

In any event, they did reconcile the differences, if there were any, and a contract was written for the acquisition of the business.

By Mr. Hays:

Q. Did anyone discuss with you the basis of what transpired at that meeting?

A. Oh, I think in a general way they told me what discussion went on.

Q. What did they say went on?

A. Well, they discussed the basis of the deal, what the business was worth.

120 Q. Price?

A. Price.

Q. Yes?

A. Yes.

Q. And then what happened with reference to the acquisition?

A. The contract was signed and a closing was made 30 days later, April 30, '51.

Q. Was any report made to the Board of Directors of Consolidated Foods?

A. It was reported to the Board of Directors, yes, that an acquisition or the negotiations were being carried on and I don't have the records before me, but it would naturally be approved by the Board of Directors.

Q. As President of Consolidated Foods, did you see any advantage to making this acquisition?

A. Yes, because it had a good balance sheet and good profit and loss.

Q. It was a profitable company at that time?

A. Yes.

Q. Did you see any other advantage to making the acquisition?

A. It had a potential. It was a growing industry.

Q. The industry itself was growing?

A. Right, that segment of the industry.

Q. Did you see any other advantage to making acquisition?

A. No, I think that was enough.

121 Q. Prior to this time, had Consolidated Foods engaged in the principle of reciprocity before, with any of its—through any of its divisions at that time?

A. There is no such policy in Consolidated Foods as reciprocity.

Q. Did you state yesterday that you felt that it was good business, or you saw nothing wrong —

A. Nothing wrong.

Q. —with going to a company that purchased, that you

purchased from and asking them to purchase things that you sold?

A. I said I didn't think there was anything wrong if a supplier and a purchaser voluntarily agreed to do business in the best interests of both, or to the advantage of both.

Q. Has this been referred to as reciprocity by you at any time?

A. Could be in conversation, but there is no such policy in Consolidated. We do business with several thousand suppliers. Some of them use Gentry products in one way or another.

The number mentioned here, and they are merely mentioned by sales people who would like to make a sale, would probably number not less than two dozen out of several thousand, so there is no policy in so far as reciprocity is concerned.

Mr. Walker: Excuse me, Mr. Kennedy. I believe you meant not more than two dozen instead of less.

The Witness: Not more than two dozen accounts 122 mentioned here by salesmen who wanted to report to headquarters and wanted to keep their name before the officers of Consolidated Foods.

By Mr. Hays:

Q. You don't have any knowledge that they just wanted to keep their name before the officers of Consolidated Foods, do you?

A. Yes, I think that is the general hope of all our operating people, that we won't forget them in the field.

Q. Isn't the principal thing they want to do is to sell their products, isn't it?

A. That is what they are hired for, yes.

Q. Going back again, this type of relationship that you have just described, you say it is not a policy, but you see nothing wrong with it, is that correct?

A. If it is handled on a strictly legitimate basis and no pressure or threats used, I see nothing wrong with it, no.

Q. Did you engage in this type of practice through any of your divisions prior to, immediately prior to the time you acquired Gentry, Incorporated?

Mr. Walker: Your Honor, I am going to object to this because I don't see the relevancy of this line of inquiry to the practices involving Gentry, which is the only thing that is at issue in this complaint.

Hearing Examiner Kolb: Overruled.

123 The Witness: What was the question?

Hearing Examiner Kolb: Read the question to the witness, please.

(The reporter read the question.)

The Witness: Again I want to emphasize that we have no such policy in effect.

We are merely talking about a couple dozen accounts here that either appeal to us for reciprocity or salesmen reported to us in the hopes that we might do something to help them.

I don't know of any similar arrangements before. I think it goes on in business every day. If you are doing business with a certain firm, and you have some products to sell, without pressure, without even suggesting, often times it leads to a closer relationship between buyer and seller.

By Mr. Hays:

Q. Did you engage in this practice immediately prior to the acquisition of Gentry, Incorporated, through any of your divisions or subsidiaries?

A. I can't recall, no.

Q. Were you aware of the fact that such a relationship would be available, once Gentry was acquired?

A. We placed no emphasis on it.

Q. Were you aware of it?

A. No, I wasn't aware of it, no.

124 Q. Didn't you understand that this was a common practice in industry?

A. I understand, I understood it was done in industry, but we didn't acquire Gentry with the thought of putting pressure on customers to buy their products, no, definitely no.

Q. Weren't you aware that by the acquisition of Gentry a relationship would be established whereby you would be in a position to engage in the practice you have just described?

A. That was not part of the consideration when we acquired Gentry, no.

Q. You were not aware of it?

A. Well, I have been in business more than a few years.

Q. Exactly?

A. I know—

Q. Exactly?

A. I know it is practiced, but it was not part of our deal.

Mr. Owen: Counsel, will you let the witness finish answering his questions when he is in the middle of it, please?

Mr. Hays: I would be delighted to.

Is your answer complete?

The Witness: I think so. It was not considered at all in our negotiation for the purchase of Gentry. The purchase was based on the condition of the balance sheet and operating statement. We considered it a good investment for Consolidated. We had no thought of, we didn't think, based

125 on the balance sheet, they needed any help. They were doing all right.

By Mr. Hays:

Q. Were you aware—let me put it this way: you were aware then, because you had been in business many years before, of the type of practice that has been described?

A. That relationship between buyer and seller has gone on for years.

Q. Yes.

A. I knew that such a relationship existed between buyer and seller.

Q. I understand that in actual process of making the acquisition, that you acquired all of the assets of Gentry, Incorporated, in exchange for Consolidated Foods stock, is that correct?

A. Correct.

Q. And after the stock was transferred to Gentry, Incorporated, it then distributed its stock, that stock, to its stockholders, is that correct?

A. That is right.

Q. After the acquisition of Gentry, Incorporated, it then became the Gentry Division of Consolidated Foods, is that correct?

A. That is right, it ceased to be a corporation. It was a division.

126 Q. And then what did you do with reference to the personnel of Gentry, Incorporated, and the policies of Gentry, Incorporated?

A. There was no change in personnel and we continued the policies as they had operated in the past.

Q. Did you bring in any new personnel?

A. Not at that time.

Q. How did you acquaint the person, Mr. Clausen, with the policies of Consolidated Foods Corporation?

A. We visited back and forth and discussed their operation. That is about it.

Q. Subsequently were any changes made in the personnel or operating policies of Gentry Division?

A. Changes were made in personnel. Mr. Clausen became ill and we turned the management, the nominal head of the company, over to Mr. Bellisime.

There was no major changes in operating policies. They continued as a separate entity.

Q. Was Mr. Bellisime with Gentry, Incorporated, prior to the acquisition?

A. Yes, sir, yes, sir.

Q. Did you transfer any salesmen from Consolidated Foods to Gentry, Incorporated?

A. No, sir.

Q. Their sales policies, sales force, remained intact?

127 A. Remained the same.

Q. And has that been true ever since Mr. Bellisime took over?

A. Yes, sir.

Q. And then was relieved by Mr. Prater?

A. Yes, sir.

Q. Prior to the acquisition of Gentry, Incorporated, from what source did the various divisions of Consolidated Foods buy their dried food seasoning, such as dried onion and garlic, chili powder and paprika?

A. Our purchases of those products are infinitesimal. I don't know where they bought them. They might have bought them from Gentry.

Q. You do not know where they bought them?

A. No, but it isn't, it is practically nothing as far as our purchases are concerned.

Q. You do not know how much they were though?

A. I would say they vary around $40,000.

Q. $40,000 a year?

A. Yes.

Q. At that time?

A. It might be a little less at that time.

* * *

Hearing Examiner Kolb: There is a couple of questions I would like to ask Mr. Kennedy first.

128 You gave a list of the various divisions and subsidiaries. As I understand, you have what you call divisions, which are part of Consolidated itself, and you have subsidiaries, which are separate corporations, which Consolidated owns a part of?

The Witness: That is right.

Hearing Examiner Kolb: And I believe you said Mr. Prater was Vice President and later President of Gentry?

The Witness: The Gentry Division.

Hearing Examiner Kolb: But Gentry was really a division and not a separate subsidiary, is that right?

The Witness: That is right.

Hearing Examiner Kolb: How many divisions, distinguished from subsidiaries, that you gave?

The Witness: I would say 50-50.

I might add, your Honor, that the officers of the division are not officers of Consolidated Foods. They are, they have authority within the division.

Hearing Examiner Kolb: In other words, you carry sort of a setup of Vice President and President, although it is really not a corporation, is that correct?

The Witness: That is right.

Hearing Examiner Kolb: You give them that distinction?

The Witness: We give them that distinction and they have authority to operate their own division. They have no
129 authority outside of their own division.

Hearing Examiner Kolb: They are employees of the Consolidated?

The Witness: That is right.

* * *

130 A. L. LERNER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. State your full name, please.

A. My name is A. L. Lerner, L-e-r-n-e-r.

Q. And you are employed by Consolidated Foods?

A. That is correct.

Q. For how long have you been employed by them?

A. Oh, six years.

Q. What is your present position?

A. Present position is vice president, director of purchases.

Q. And who is your immediate superior?

A. Mr. Kennedy.

Q. And are you in charge of the total purchases of Consolidated Foods and its subsidiaries?

A. I am in charge of the total purchases for the distributing divisions.

131 Q. For how long have you held that position?

A. Since 1953.

Q. Prior to 1953, you were employed by Consolidated Foods?

A. For approximately a year before that.

Q. And what position did you hold at that time?

A. I was the head buyer for Royal Blue Stores.

Q. That was a division of Consolidated Foods?

A. Yes, part of Consolidated.

Q. Are you in charge of the purchases by Consolidated Foods of products that are processed by others and on which is placed the brand of Consolidated Foods?

A. That is correct.

Q. That is referred to as buyer's brand?

A. Buyer's or private label.

Q. Private label business?

A. Yes.

Q. You are in charge of that business?

A. That is correct.

Q. Do you set the specifications for the products that are prepared under this private label?

A. We have no specifications other than government standards.

Q. That is the only specifications you ever have?

A. That is right, we use those as minimum specifications.

Q. What type of products do you buy?

A. Practically everything in the grocery field.

132 Q. Everything — canned products?

A. Canned, packaged, bottled, cellophane.

Q. Do you purchase products, part of which consists of the type of products that are processed by the Gentry Division?

A. You mean do we purchase products, the raw materials of which might be part of Gentry's items?

Q. Might be the type of product which Gentry processes?

A. Well, Gentry processes spices. We purchase spices.

Q. Well, a number of the products contain dried onion and garlic, do they not?

A. Well, I can only assume that some of the products we purchase contain dried onion. We have no way of knowing whether it is dried, fresh or some other form.

Q. You don't make any attempt to determine the type of ingredients that go into your private label purchases?

A. No, not as long as they meet government standards.

Q. And you have never done so?

A. Sir?

Q. Have you ever done so?

A. No, not as a matter of purchasing.

Q. Well, have you ever done so in any respect, beyond the purchasing?

A. Would you please restate the question?

Hearing Examiner Kolb: Let the reporter read the question.

133 Mr. Hays: Read the question.

(The reporter read the question.)

By Mr. Hays:

Q. Your answer, I believe, was "Not as a matter of purchasing."

A. Well, as I understand the question, did we ever check to see if a particular product contained items which Gentry packs, is that what you meant?

Q. The type of items.

A. No, we have never questioned that.

Q. You have never had any specifications with reference to your private label products?

A. No, we never have.

Q. Have you ever had any inquiries from any of the divisions of Consolidated Foods with reference to the names of suppliers that use in their product the type of product sold by other Gentry divisions?

A. I don't recall that I have, no.

Q. You don't recall?

A. No.

Q. Have you ever had any inquiries from the members of the Gentry division with reference to the names of suppliers of private label product that used the type of dried food seasoning that Gentry produced?

A. Yes.

Q. You have had those inquiries?

A. Yes.

134 Q. When did you have those inquiries?

A. I would say approximately two years ago.

Q. And who made those inquiries?

A. One individual, Mr. Kraham, K-r-a-h-a-m.

Q. Is he the only individual that made those inquiries?

A. He is the only one that I can recall, yes.

Q. And what was the substance of that inquiry?

A. I believe he wanted to know if we were doing business with these particular people.

Q. What particular people did he refer to?

A. Morgan Packing Company, Michigan Mushroom and I believe Illinois Meat Company were the only ones that I can recall.

Q. And did he ask you to do anything other than to supply the names of those companies?

A. He asked if there was anything we could do to help Gentry.

Q. And what did you do?

A. In the instance of Morgan and Michigan Mushroom, I spoke to them and asked what the setup was, whether or not they were doing business with Gentry.

Q. And to whom did you speak at Morgan?

A. At Morgan I spoke to a man by the name of Paulson.

Q. And to whom did you speak at Michigan Mushroom?

A. Michigan Mushroom, we dealt through their Chicago broker.

Q. What was his name?

A. Al Livingston & Associates.

Q. And did you do anything else when you con-
135 tacted those two individuals?

A. Mr. Paulson gave me the information that they had been doing business with Gentry and that they would continue to do business with Gentry, if Gentry would maintain a local warehouse stock. He said that was the reason they had discontinued doing business with them, and I passed that information along to Mr. Kraham.

Q. And what happened with reference to the contact with Michigan Mushroom?

A. Michigan Mushroom as I recall gave me the information that they were buying X percentage of their busi-

ness from Gentry. I don't recall, but I do recall that it seemed to me a fair share of the business. I told Mr. Kraham that. After that I lost interest and I had no further contact.

Q. Are those the only two instances that you contacted the suppliers as a result—

A. Well, Illinois Meat Company.

Q. As a result of inquiry?

A. Well, Illinois Meat Company also.

Q. The what?

A. Illinos Meat Company.

Q. That was, that is owned by Armour & Company?

A. No, that is owned by the Illinois Meat Company.

Q. It is a separate corporation?

A. I don't believe there is any connection with Armour.

136 Q. And what was—what did you do in that instance?

A. I told Mr. Kraham that I would not contact them directly, but if I ran into their personnel, I would question them. I did run into Mr. Brickman, who is the president of Illinois Meat Company, at a trade outing, and asked him what the story was there. He told me that he had no knowledge of it, but he would find out and sometime later he called me and said that they had been giving Gentry business, but they had difficulty with their quality, which was the reason they had discontinued doing business with them. I passed that along to Mr. Kraham and had no further contact after that.

Q. Did you remind any of these people that you made purchases from them?

A. No, sir.

Q. Were any of them making purchases; were you making purchases from them at any time?

A. Oh yes, right along.

Q. At the time you made the contact you were making purchases from them?

A. Correct.

Q. And did you, in making these purchases, did you contact the same people that you have already named?

A. The only one would be in the case of Michigan Mushroom, where we do business with the local broker.

Q. Have you ever heard the term reciprocity used?

A. Oh yes.

137 Q. What is your understanding of that term?

A. Well, if I may use the vernacular, you scratch my back and I will scratch yours.

Q. Going beyond the vernacular, what, as a practical matter, is that?

A. Well, as a practical matter, if "A" is doing business with "B", possibly "B" can give some business to "A".

Q. And in the instant case, or in one of the examples that you cited, the "A" would be the Consolidated Foods, and the "B" would be Michigan Mushroom Company?

A. Could be.

Q. And the business that "B" would give would be business to the Gentry division of Consolidated Foods, is that correct?

A. In that particular instance.

Mr. Hays: That is all I have.

Cross Examination

By Mr. Walker:

Q. Mr. Lerner, did you consider your approaches to the individuals that you named in each of these three instances, that is, the Morgan Packing Company, the Michigan Mushroom Company and the Illinois Meat Company, to contain any implied threat that Consolidated would stop purchasing from these companies if they did not buy from Gentry?

A. No.

Mr. Hays: Objection, conclusion, opinion.

138 Hearing Examiner Kolb: Read the question.

(The reporter read the question.)

Hearing Examiner Kolb: Objection overruled.

The Witness: No, none whatsoever.

By Mr. Walker:

Q. Do you know of any instance of your own knowledge, Mr. Lerner, where any threat was made to any concern from which Consolidated purchases, by any individual connected with Consolidated, that Consolidated would stop doing business with that Company if they did not purchase from Gentry?

A. I know of no such instances, no.

Q. Would you say, Mr. Lerner, that there is any policy in connection with the purchasing activity of Consolidated Foods Corporation in this area about which we are speaking?

A. I don't quite understand the question.

Q. Well, let me get at it this way: Mr. Lerner, what factors do you consider in deciding from whom purchases will be made for Consolidated?

A. Well, we consider only three factors. I assume you are speaking of private label merchandise.

Q. I am speaking of any purchasing that you do for Consolidated.

A. Well, purchases done by our office must be broken down into two categories. In the one you have the private label or buyer label category on which we put our own labels. The other category is the nationally advertised or packer label brands. When it comes to a nationally
139 advertised brand or a packer label, we cannot tell the packer what he should put in it. It is under his label as he presents it to us. If it is an item we feel we can sell

and that our customers will take, we buy it. The other field of private label merchandise we consider only three criteria in considering whether or not we are going to purchase. The first one is quality. The second is service and the third is price. That is all that we consider.

Q. Now, Mr. Lerner, in your opinion and based on your wide experience, to which you have testified, in the purchasing field, would it be effective if any purchaser or buyer for Consolidated went to any of its suppliers and said to them, you must purchase your requirements of dried food seasonings from Gentry or else we will stop doing business with you?

Mr. Hays: Objection, opinion. It calls for a conclusion. It is the type of conclusion that the Examiner and the Commission no doubt will make after it hears all the facts.

Mr. Walker: I think, your honor, that Mr. Lerner's background in the area of purchasing is sufficient to entitle him to give an opinion in this area, of whether such an approach would be effective, if made. The weight to be given to that opinion is something which the Hearing Examiner and the Commission will want to consider, but I think it is something you will want to consider.

Hearing Examiner Kolb: Overruled.

140 The Witness: I would say it had no effect whatsoever.

By Mr. Walker:

Q. Why not, Mr. Lerner?

A. Because I don't think there is a single case where we as a buyer from the supplier, where total purchases in relation to his sales is important, and therefore any such request by us would carry very little weight, if any.

Q. Just to make it absolutely clear, Mr. Lerner, do you know of any instances where Consolidated has refused to buy from any supplier because of its failure to purchase from Gentry?

A. No, I do not.

• • •

143-144 Los Angeles, California
October 14, 1958

145 PROCEEDINGS

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LLOYD C. BELLISIME was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Mr. Bellisime, will you spell your full name for the reporter, please?

A. My name is Lloyd, L-l-o-y-d, C. Bellisime, B-e-l-l-i-s-i-m-e.

Q. You are here today in response to a subpoena, is that correct?

A. Yes, sir.

Q. Do you have the subpoena?

A. Yes, sir.

Q. Will you hand it to me, please?

A. Yes, sir.

Q. What is your present home address, sir?

A. 2627 North Olive Lane, Santa Ana, California.

Q. And where are you presently employed, sir?

146 A. With a firm called Standardized Products.

Q. At one time you were employed by Gentry, Inc., and the Gentry Division of Consolidated Foods, is that correct?

A. That is correct.

Q. Will you state the time period that you were so employed, and the duties that you held?

A. I first went to work for the predecessor company of Gentry, Inc. in 1940 and was with them until, I am not sure whether it is three or four years ago, it would be 1954 or 1955.

Q. During that time you were employed what did you do, just tell us about your duties from the time you were first, you first went with the company until you left the company?

A. I started in as a salesman for the company and spent a number of years traveling for the company in various parts of the United States; then I became vice-president of Gentry, and into executive vice-president of the Gentry Division of Consolidated Foods.

Q. As of 1950 what was your position?

A. In 1950 I would guess that I was then the vice-president of Gentry; Gentry, Inc.

Q. Were you vice-president after Gentry, Inc. was taken over by Consolidated Foods?

A. Yes.

Q. And who was the president?

A. Mr. George Clausen.

147 Q. He was president at the time of the takeover?

A. That is right.

Q. And after the takeover by Consolidated Foods, what was your position?

A. After the takeover I became executive vice-president of Gentry Division.

Q. Of Consolidated Foods?

A. Yes.

Q. And as executive vice-president did you hold that job until you left, same job?

A. Yes.

Q. As the executive vice-president what did you do?

A. Just about everything that the title would imply, in other words, worked with the salesmen, more or less

handled some of the procurement of raw materials, or reviewed the procurement of raw material; worked with the sales people in determining what materials the company should produce from a sales point of view; more or less executive duties; some actual selling along with it.

Q. Did you have any superiors?

A. Yes, sir.

Q. Who were they?

A. Well, Mr. George Clausen was president of the Division, and then of course in addition to that, the entire Division reported to Chicago.

148 Q. You reported to Mr. Clausen, I take it?

A. That is right.

Q. Were you responsible to anyone else?

A. You mean in the Gentry Division?

Q. Yes.

A. I wouldn't say so.

Q. I didn't understand you.

A. I would say no.

Q. Everyone else in the Gentry Division, then, was under your supervision?

A. Yes, probably the answer to that would be yes.

Q. Well, there were a lot of employees in the Gentry Division, is that correct?

A. Quite a few, yes, sir.

Q. Can you think of any that were not responsible to you, other than Mr. Clausen?

A. No, I think that I can't think of any.

Q. During the time that you were the executive vice-president of the Gentry Division, were you familiar with the Division's method of keeping and maintaining files?

A. You mean the Gentry Division?

Q. Yes.

A. Yes.

Q. And were you familiar with the sales methods of the Gentry Division?

149 A. Yes, sir.

Q. And were you familiar with the mechanics of selling and reporting sales?

A. Yes, sir.

Q. From time to time when you were executive vice-president of the Gentry Division, did you have reason to write salesmen under your supervision?

A. Yes, sir.

Q. Did they have reason to write to you?

A. Yes, sir.

Q. Letters were sent and received?

A. Right.

Q. That was a general policy of the Division, to send and receive letters to and from you and the salesmen?

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149-150 [Objection to use of leading questions sustained.]

• • •

150 Q. Well, what was the practice insofar as the sending of communications to and from you and the salesmen, what was that practice?

A. The practice was to have the salesmen, the sales people, report daily to the office, which was in Los Angeles, and those were — those situations, those call reports were reviewed by a number of people. Wherever there was ever any activity indicated in the form of sending out samples or follow-up letters or what not, the requests of the sales people were met with.

Q. I am going to show you Commission's Exhibit for identification No. 6, 7-A, and 7-B. I think the record shows that for the purposes of this hearing at least it was a letter sent, a file copy of a letter sent by you to Mr. M. E. Atkinson. Will you tell me who Mr. Atkinson was; who is he?

A. Yes, sir. There was a Mr. M. E. Atkinson in
151 charge of the Chicago office for a period of time.

Q. And was he in the Chicago office in September of 1951?

A. That, sir, I can't answer. I think the record would speak for his period of employment in that office. I don't recall.

Mr. Hays: Will you stipulate to that, Counsel?

Mr. Walker: I will stipulate Mr. Atkinson was an employee of Gentry at the time. I do not know precisely where he was located.

By Mr. Hays:

Q. Was he one of those employees under your supervision?

A. Yes, sir.

Q. I am going to show you Commission's Exhibit for identification that I have just referred to, 6, 7-A and 7-B, and ask you to examine it and state what the circumstances were insofar as how that was prepared.

Mr. Walker: By that question I assume you are referring to document No. 6, and not the documents Nos. 7-A and 7-B which was written by someone other than the witness; is that right?

Mr. Hays: I am referring to the whole thing, 6, 7-A, and 7-B.

Mr. Walker: Then I will object because I don't know how this witness can testify to the circumstances surrounding something written by another person, Mr. Farrell.

Mr. Hays: I believe examination of the witness will
152 show that 7-A and 7-B was an enclosure that went along with Exhibit No. 6.

Mr. Walker: But I want to be very careful here; it is my objection that this witness should not be asked or testify about the circumstances surrounding the writing of a letter by another person unless you can demonstrate in some way

that he did have in some way personal knowledge of those circumstances. Ordinarily, he would obviously not have such knowledge, and that I believe was your question.

Mr. Hays: My question, Your Honor, is directed—There are two letters involved, one of which forwards the other.

Hearing Examiner Kolb: I will overrule the objection at this time, and see what the witness answers.

A. I am not sure, sir, that I understand the question. You asked me, if I recall correctly, to give you the circumstances around which this letter was written?

By Mr. Hays:

Q. The mechanics, yes, the mechanics of the letter writing; that is a file copy, is it not, sir?

A. Sir, I wouldn't know whether this is a file copy or not.

Q. Well, for the purposes of this hearing I believe it is stipulated that it is such, so you may assume that it is a file copy. Now, how did it come about that that copy was made?

A. It was the policy to dictate letters and to keep 153 a copy of those letters, of virtually all letters.

Q. And what was the purpose of keeping a copy of the letters?

A. The purpose of keeping copies of all letters was to have a running case history of what had transpired with individual accounts and the correspondence that transpired back and forth from the Los Angeles office and sales people.

Q. Is that true of Commission Exhibit for identification 6 and 7-A and 7-B?

A. What were those numbers again?

Q. The documents you have right there.

A. All these documents?

Q. Yes.

A. May I ask for your question again, sir?

Mr. Hays: Would you read the question, please?

(Record read.)

The Witness: In other words, is it true that these copies were filed?

By Mr. Hays:

Q. And were for the purpose that you indicated that they were for?

A. I would say so, yes.

Mr. Hays: I offer Commission Exhibit No. 6 for identification, and 7-A and 7-B.

Hearing Examiner Kolb: Any objection?

Mr. Walker: Could I have just a second, Your Honor? I am sorry.

Yes, I am going to object, Your Honor, and I would like to object on the grounds that the document constitutes hearsay evidence insofar as Exhibit No. 7-A and No. 7-B is concerned, and I will make my objection only to Exhibit 7-A and 7-B. I assume that the theory under which 7-A and 7-B are being offered in evidence is that the hearsay rule is not applicable because of the Federal Shop Book Rule; is that correct, Mr. Hays?

Mr. Hays: That is correct.

Mr. Walker: Then I do not believe that there is yet in this record, Your Honor, a sufficient foundation for the admission of these letters under the Federal Shop Book Rule. I don't wish to be technical about this, Your Honor, but as I am sure you have appreciated by this time, there are a very large number of letters, call reports, and documents that are involved here, a number of which we think are highly prejudicial and should not be received in evidence, and that is why I am being so careful about this area.

Now, as for the reason why I do not believe that the requirements have been met as we discussed at the hearing in Chicago, Your Honor, the requirements of the statute are that it must be proved in order to satisfy the requirements of the statute that it must have been in the regular

course of business to make the memorandum or record
155 at the time of such act, transaction, occurrence or event, or within a reasonable time thereafter. Now, I don't believe there is in the record thus far any testimony that it was in the regular course of business for Mr. Farrell, who is the writer of document No. 7-A and 7-B, to make this sort of a memorandum or record at the time of the act, transaction, occurrence or event related therein within a reasonable time thereafter, and until such foundation has been laid I don't believe it is proper to admit the document under the Federal Shop Book Rule.

Mr. Hays: Mr. Walker's objection to 7-A and 7-B might be well taken, but for the fact that 7-A and 7-B is an enclosure which is covered by Exhibit No. 6, and although they may appear to be two separate and distinct letters, they nevertheless, as they are there, are one document.

Mr. Walker: May I just say, Your Honor, I know of no rule of evidence or law that any document can be gotten into evidence simply by the expedient of attaching it to a document which is admissible in evidence. The document No. 7-A and 7-B must go in on its own feet. We have had no testimony by the author of this document; all we had was testimony by Mr. Bellisime that it was the practice to make carbon copies of letters and put them in the files. We have absolutely, we have had no testimony in the record of the document having been made in the regular course of business in regard to such act or transaction at or
156 about the time they occurred or within a reasonable time thereafter.

Hearing Examiner Kolb: This appears to be a letter by Mr. Bellisime in which he encloses certain documents. I think it is proper to consider that document as a whole. I will overrule the objection, the document will be received in evidence as Commission's Exhibits 6, 7-A and 7-B.

* * *

By Mr. Hays:

Q. Mr. Bellisime, when you were executive vice-president of the Gentry Division of Consolidated Foods, and you received letters from various people, salesmen that you were in charge of or that were responsible to you, what did you do with those letters, once you had received them?

A. If there was any action indicated, it was taken and the letters were then filed.

Q. And what was the purpose of filing the letters?

A. The purpose of filing the letters, as all correspondence, was to keep a record of what had taken place.

Q. I show you Commission's Exhibit for identification No. 8-A and 8-B, and ask you to state whether that document comes within the description that you have just given?

A. May I be sure I understand the question; you are asking me as to whether or not this document, for pur-
157 poses of record, would have been filed?

Q. Yes, sir.

A. I would say that under normal circumstances this, along with all documents, would have been filed.

Q. Yes, thank you.

Mr. Hays: I offer Commission's Exhibit No. 8-A and 8-B.

Mr. Walker: Your Honor, I would like to object, and at this time, Your Honor, I recognize that you have overruled my objection regarding the foundation that has been laid, but I would like to repeat that objection. I would like, however, Your Honor, to make a much more serious objection to this particular document, which I think raises the most crucial issue that we have in this case regarding the admissibility of these documents. I invite Your Honor's attention, if I may, please, to the second part of the letter, "Knoxham, Inc., Airline Foods, Linden, New Jersey, Mr. Kennedy states this firm assured Guardly & Associates, our public relations counselors, that they were good friends of Consolidated."

Now, this, Your Honor, as you can see, is a letter by Mr. Atkinson. In the course of this letter Mr. Atkinson is stating what Mr. Kennedy said, and going further, Your Honor, he is stating what Mr. Kennedy said someone else said, so that we have at least double if not triple hearsay in this situation.

158 Now, Your Honor, even under the Federal Shop Book Rule, and the cases are very explicit on this, even where a letter is properly admitted in evidence under the Federal Shop Book Rule, the statutory requirements have been met, there is no authority whatsoever for admitting letters which do contain hearsay on their face. The point that I would like to make, Your Honor, is that if Mr. Atkinson himself were on the stand, the author of this letter, he would not be permitted to testify under the rules of evidence to the conversation that is repeated in paragraph 2 of this letter, and as you know, the reason for that under the law, Your Honor, is that if that were done we would be deprived of our right to cross-examine both Mr. Kennedy and this other gentleman whose remarks are going into the record through this document, and it compounds the difficulty, Your Honor, when it is in.

I can't stress this too much, Your Honor, because there are a number of other documents which I am sure counsel supporting the Complaint will offer in evidence at a later time, and so that you will realize the seriousness of this matter, if I may, and forgive me for taking a little more time here, I would like to point out the kind of thing that is going to be in those letters and the kind of thing that, if you overrule my objection here, will be a precedent for letting that evidence in at a later time. You will find in these letters, Your Honor, references or statements by some of the authors of the letters that another individual told

159 them that sales were made to the Gentry Division of Consolidated Foods Corporation as a result of a con-

tact made with that customer by an employee of Consolidated Foods Corporation.

Now, as Your Honor knows, those statements go to the very heart of the issues in this case. It is one of the ultimate facts that I am sure Government Counsel is going to try to prove, that is, that as a result of contacts by Consolidated personnel, the Gentry Division made sales, and that is a very important fact in this case, Your Honor, and we do not believe that it is so, and in every one of these instances we feel that it would be very prejudicial to us if evidence of that fact,—and it is being offered, Your Honor, for the truth of the fact asserted,—if that evidence goes in by that route and we are denied the opportunity to cross-examine the maker of the statements, then I say to Your Honor it is very, very serious.

Now, I don't wish to prolong this argument, Your Honor, but I do believe that the hearsay problem here that you have goes beyond that that normally comes up in these proceedings, and I would like to refer Your Honor to an article that was written by William C. Kern, who is the Senior Trial Attorney, or was at the time that he wrote it, as I understand, for the Federal Trade Commission, and in the course of this article, Your Honor, he said, and I quote:

160 "I believe all these," — that is the rules of evidence, —"to be fundamentally healthy and wholesome ground rules enabling both respondent's counsel and Government counsel to operate in an atmosphere of fair play. After all, the purpose of these formal proceedings is to adduce the facts, and only the most credulous will say that the facts can be arrived at by hearsay, by secondhand or by rumor testimony."

That, I submit, is the course that we are embarking on here, Your Honor, a course which will eventually lead to Government Counsel offering in evidence these documents in violation of all the traditional rules, of the hearsay rule,

and will get into this record unreliable evidence on one of the very crucial facts in issue. I have a number of quotations, I won't burden you with them, from Federal decisions on this precise question, that is, whether documents otherwise admissible may be admissible when this — when they contain hearsay of this type, and the authorities say, Your Honor, that they are not.

Hearing Examiner Kolb: This is correspondence, I understand, between the executive vice-president—you were the executive vice-president at that time?

The Witness: Yes, sir.

Hearing Examiner Kolb: And the manager of the Chicago Division, is that right?

161 Mr. Walker: I am not sure. Just a second, Your Honor, I will find out.

Yes, he was, Your Honor.

Hearing Examiner Kolb: And I think that as a part of the correspondence, the course of the correspondence, that these documents are admissible. It at least shows he saw fit to refer to the matter in sending a letter. It does not necessarily, I think, prove it actually stated that, or what he stated, but I think it is admissible as part of the correspondence.

Mr. Walker: I think it is admissible, Your Honor, to show that the statement was made. I think that under the hearsay rule, Your Honor, it is not admissible for the truth of the statement that was made; that is the fundamental distinction in the hearsay rule, and I have no objection whatsoever —

Hearing Examiner Kolb: It just shows that Kennedy made the statement and he saw fit to communicate that statement to the Chicago office.

Mr. Walker: That is just fine, Your Honor, and if we may have the understanding the document is going in for that purpose —

Mr. Hays: I am offering the exhibit for the truth of the matters stated therein; it comes within the Federal Shop Book Rule; the maker doesn't have to have personal knowledge as long as it is a record it is admissible for all purposes. I am offering it for all purposes.

Furthermore, I am sure that when Mr. William C. Kern, whom I assume is the present Commissioner Kern, when he made the statement he made, he didn't mean to criticize the Supreme Court in the Cement case, when they admitted the Trainor letter. I don't think he was attempting to overturn the principle that the Examiner and the Commission is entitled to evaluate hearsay evidence and give it its proper weight.

Hearing Examiner Kolb: Well, the objection will be overruled. The document will be received in evidence as Commission's Exhibit 8-A and 8-B; is that it?

Mr. Hays: Yes, Your Honor.

Hearing Examiner Kolb: Wait a minute. Well, I guess it is 8-A and 8-B. I can't find any number on it.

Mr. Hays: It is, Your Honor, there is a small number at the bottom.

Hearing Examiner Kolb: All right.

Mr. Hays: Is it admitted?

Hearing Examiner Kolb: Yes.

(The document referred to, heretofore marked for identification Commission's Exhibit 8-A and 8-B, was received in evidence.)

By Mr. Hays:

Q. Just for the record, Mr. Beliisime, do you know Mr. Joe Farrell?

A. Yes, sir.

Q. That is the gentleman sitting out there?

A. Yes, sir.

Q. Did he work under you when you were executive vice-president?

A. Yes, sir.

Q. What did he do?

A. Mr. Farrell had charge of the New York office; then later became sales manager.

Q. I am going to show you Commission's Exhibit for identification No. 9, and ask you to state if that is in the same category as Commission Exhibit 8-A and 8-B except that it was sent by a different person?

A. Again, sir, if I understand that correctly, you are asking me whether or not this letter could have gotten into the files as carbon copies of documents were filed?

Q. That is right; it is in the same category as you have described 8-A and 8-B, except that instead of coming from Mr. Atkinson, it came from Mr. Farrell?

A. I am sorry, I don't think it is his signature.

Q. Oh, I am sorry, I am mistaken, then, it is in the same category as Commission Exhibit 6, is that correct? Copy of a letter that you made as a record?

A. I don't recall whether it is or isn't, as far as your 164 Exhibit 6 is concerned.

Hearing Examiner Kolb: No. 6 is a letter from Mr. Bellisime to Mr. Atkinson.

By Mr. Hays:

Q. Well, I will show you Commission Exhibit 6 again so that you can compare the two, and state if there are any differences insofar as the preparation and keeping are concerned.

A. I wouldn't say so, no.

Q. There is no difference?

A. No.

Mr. Hays: I offer Commission's Exhibit for identification No. 9.

Mr. Walker: I will object, Your Honor, on the grounds, first, that the document is hearsay, it has not been established that the document was written and sent by the maker;

if the document is offered under the Federal Shop Book Rule, I will object that the standards set up by the statute in cases have not been met, and the proper foundation has not been laid.

I will further object that even if those requirements have been met, the document obviously contains prejudicial hearsay, and further, that the document contains opinions and conclusions.

Hearing Examiner Kolb: I believe the witness did testify this is a letter written by him to Mr. Farrell, is 165 that correct?

Mr. Hays: I think that was stipulated, wasn't it?

Mr. Walker: There is no question about that. Is this letter being offered under the Federal Shop Rule?

Mr. Hays: Yes, it is; it is already stipulated that these letters were sent by the persons that sent them and were received by the persons that they were directed to.

Mr. Walker: Yes. I will withdraw the first objection; I am sorry.

Hearing Examiner Kolb: Objection overruled; it will be received in evidence as Commission's Exhibit No. 9.

(The document referred to, heretofore marked for identification Commission's Exhibit 9, was received in evidence.)

By Mr. Hays:

Q. Do you know a Mr. Ed Bohnlofink, did you know him?

A. I think I met—

Q. Who was he?

A. He was, I believe, one of the managers of a Consolidated Foods Division on the Atlantic Seaboard; I am not too sure; perhaps Baltimore or—

Q. I am going to show you Commission Exhibit for identification No. 10, and ask you to examine it and tell me what it is.

A. It is a copy of a call report sent in by Mr. Farrell.

Q. What is a call report?

166 A. A call report was a call report on the form such as evidenced here covering the salient points of a discussion a representative had with the firm upon whom he called. It is a report to the head house covering the gist of what transpired in the conversation.

Q. Under what circumstances were call reports sent?

A. The sales people were instructed to make out call reports on a daily basis covering every account upon whom they called.

Q. And what did you do with them after you received them?

A. We read them, did whatever could have been indicated, sent out samples, if samples were requested, and so forth; then filed them.

Q. What was the purpose of filing the call reports?

A. To have a historical record of what had transpired with the accounts individually.

Q. Now, that is true of this call report, that is, Commission's Exhibit for identification No. 10, that is how this call report happened to be in your files, is that correct?

A. I would say—when you say my files—

Q. The company's files.

A. I would say so, yes, sir.

Mr. Hays: We offer Commission's for identification Exhibit No. 10.

Mr. Walker: May I have the same objection, Your Honor, without the necessity of restating it, that was made to

167 Exhibit No. 9?

Hearing Examiner Kolb: This appears to be a document which was made by the salesman in the ordinary course of business as a usual practice. I think that is clearly admissible, so I will overrule the objection and receive the document in evidence as Commission's Exhibit No. 10.

• • •

Mr. Walker: Your Honor, I wonder if you would, just to help me, indicate the theory on which, assuming the requirements of the Federal Shop Book Rule are met, that the document is admissible that contains this hearsay that is in this one.

Hearing Examiner Kolb: I think a salesman's report which is ordinarily made as a matter of course where he is supposed to make daily reports and he makes daily reports, I think those are admissible.

Mr. Walker: I would understand they are admissible under the rules, Your Honor, as to things observed by the salesman, but as I understand the cases, and I realize I am just being an advocate here, that they are still not admissible, to let evidence get into the record that would not be admissible if the writer himself were on the stand, and if Mr. Farrell were on the stand he could not testify, and

what we are doing is letting the document repeating
168 that hearsay come into the record when the maker himself could not testify to it, and I think this is very prejudicial to respondent in this case, and I am very troubled by it.

Hearing Examiner Kolb: Well, I will overrule the objection. I have. The document is received.

By Mr. Hays:

Q. Mr. Bellisime, I show you Commission's Exhibit for identification No. 11-A and 11-B, and I will ask you to state whether or not that is similar to Commission's Exhibit No. 6 in its preparation and purpose and manner in which it was kept?

A. I would say yes.

Q. It is the same type of document as Commission Exhibit 6 except that perhaps a different person is involved, as a matter of fact, Mr. Bohnlofink?

You nodded yes? Your answer is "yes"?

A. Yes.

Mr. Walker: I would like to have it clear, not to cause any difficulties, Your Honor, but I want to make sure of what we have in this record in the way of foundation here so this question will be fairly presented to the Court, if we ever get to that stage. Now, document No. 6 was a letter from Mr. Bellisime to Mr. Atkinson, who was an employee of Gentry; document No. 11 is a letter to Mr. Bohnlofink, who is an employee of Consolidated Grocers Corporation.

With that in mind I wonder if the witness does under-
169 stand the questions that are being asked of him.

Hearing Examiner Kolb: As I understand it, you have entered into a stipulation in this case that these documents are authentic, that they were written by the parties whose names appear, to the parties whose names appear.

Mr. Walker. That's right, Your Honor.

Hearing Examiner Kolb: I think we are unduly complicating this by asking him — I think it was stipulated they came from the records of the company, so therefore they are documents written by the parties, received by the parties, apparently, as so specified, and are part of the records of the company.

Mr. Walker: That is right.

Hearing Examiner Kolb: I don't know why we need to go further than that.

Mr. Walker: I don't know either, if that is — We have that stipulated in the record. There is no problem with that; but if we are trying to put these documents in under the Shop Rule, then there must be testimony it was in the regular course of business for Mr. Bellisime to record the type of things in this letter to Mr. Bohnofink at or about the time of the transactions.

Mr. Hays: Mr. Walker is correct. What I have tried to do, Your Honor, was to get the witness to testify with ref-
erence to the general policy, and in order to shorten
170 matters introduce each of these other exhibits in ac-

cordance with the general policy, but I think it would be a little longer but it would be the safer course to have Mr. Bellisime testify to what Mr. Walker is insisting on, because I feel certain that he will so testify.

Mr. Walker: It would be simpler in regard to this letter. This letter can go in without regard to the Federal Shop Book Rule.

Hearing Examiner Kolb: On these letters that you are putting in under the Shop Rule, they are admissible under any theory of the case, as I see it.

Mr. Hays: Well, perhaps I am being overly cautious, Your Honor, but I would appreciate it if you would let me do it this way.

Hearing Examiner Kolb: Where you would have to go into that particular document, salesmen's reports, I can understand, but as to these others, I don't. Well, all right, go ahead.

• • •

171 By Mr. Hays:

Q. Are you familiar with what has been referred to as the principle of reciprocity?

Mr. Walker: I object, Your Honor. I don't believe there has been any reference in this courtroom with the witness to the word "reciprocity."

I don't know what you mean by what has been referred to as the principle of reciprocity.

Mr. Hays: There is testimony in the other hearing, though.

Mr. Walker: This witness wasn't present at the other hearing.

Mr. Hays: I am not reading then.

Hearing Examiner Kolb: He does not know anything about it.

Mr. Hays: I am not reading now.

Hearing Examiner Kolb: Objection overruled.

By Mr. Hays:

Q. Do you know what the principle of reciprocity is?

A. I know what reciprocity is or at least I think I know. I am not—I think I will testify that I know the principle of reciprocity.

Q. What do you think it means?

172 Mr. Walker: I am going to object, Your Honor, a state of mind on the part of the witness.

Hearing Examiner Kolb: Reciprocity means, so far as this business is concerned.

Mr. Hays: That is what I am directing it to, Your Honor.

The Witness: Can I illustrate it?

Mr. Hays: Yes.

A. I think if I was buying tomato catsup and was selling tomatoes, I would hope that the man from whom I bought tomatoes would buy my tomatoes.

By Mr. Hays:

Q. Was that principle used when you were executive vice-president of the Gentry Division of Consolidated Foods?

A. Well, I am not sure that that particular principle, but that would be more or less my understanding of the reciprocity business.

Q. Did you attempt to put that into practice when you worked for Consolidated Foods?

A. Yes, sir.

Q. In putting that in practice, was it necessary to contact other divisions of Consolidated Foods?

A. Yes, sir.

Q. What divisions did you contact?

A. Well, as I recall it, we contacted—one docket 173 had the main office correspondence in Chicago and we probably contacted Reid-Murdoch Division and Sprague Warner Division, and I think C. D. Kenny Division.

Q. Is that all?

A. There may have been more. Those, I recall.

Q. How is that contact made?

A. You mean how was the contact made from Gentry to those various divisions?

Q. Yes.

A. More or less on a direct basis.

Q. Well, was it written or oral?

A. It could have been both.

Q. I am going to show you Commission Exhibit for identification 11-A and 11-B, and ask you to examine it, tell me what it is.

A. Your question is what is this?

Q. Yes.

A. It is a letter, copy of letter, photostat copy of a letter, under my signature written to the C. D. Kenny Division and expresses hope that they can help us with certain —to sell certain of the accounts in his area.

Q. Was it your customary procedure to keep a copy of letters that you—written contacts with other divisions of Consolidated Foods?

A. Yes, sir.

Q. Is that one of those letters that was kept?

174 A. I am actually not in a position to testify that this is a letter that—copy of which we had.

I think that the statement has been made earlier that these documents have been authenticated.

Q. That is correct.

Mr. Walker: The stipulation covers that.

Mr. Hays: Yes.

By Mr. Hays:

Q. And for what purpose was Commission's for identification 11-A and 11-B kept. Why did you keep it?

A. We kept it for a running case history of the account.

Mr. Hays: I offer Commission Exhibit for identification 11-A and 11-B.

Mr. Walker: It is the documents you are offering under the Federal Shop Rule; I will object on the ground that the requirements of the statute have not been met; proper foundation has not been laid.

Hearing Examiner Kolb: Objection is overruled. The document is received in evidence, Commission's Exhibit 11-A and B.

* * *

By Mr. Hays:

Q. Did you know a Mr. Emil Kohut, K-o-h-u-t?

A. The name is not familiar to me.

175 Q. I show you Commission Exhibit for identification 14-A, and 14-B and 14-C, ask you to examine it, state what it is.

A. It appears to be a photostat copy of a letter addressed to Mr. Clausen and copy of a bulletin sent out to the various distributing divisions of Gentry—beg your pardon, to the various distributing divisions of Consolidated, asking for their cooperation and whether or not the various divisions were doing business with a list of accounts attached.

Q. Mr. George Clausen was the president of the division, is that correct?

A. Yes, sir.

Q. What was the purpose of keeping letters of this kind?

A. Purpose of keeping letters of that kind was to keep a record of the various letters and correspondences that went back and forth from the company to everyone.

* * *

180 Q. When you were executive vice-president, can you state what the practice was insofar as the Gentry Division is concerned, with reference to letters received from other divisions of Consolidated Foods or from Mr. Gifford? What was done with it?

A. I think that all letters pertaining to the affairs of the company went into the general files and were filed.

Q. Why were they put in?

A. As a matter of keeping records.

Q. Is that true of 14-A, B and C, Commission's Exhibits for identification?

A. Sir, I don't think I am in a position to say that any of these came out of the files.

Mr. Hays: It is stipulated—

Mr. Walker: Stipulated.

Mr. Hays: —stipulated that they came out of the files—

The Witness: But I don't know that.

Mr. Hays: (Continuing) And if they came out of the files, which it is shown in here that they did, it is stipulated that they did come out of the files, so they must have been placed in the files; that is within the stipulation, isn't it,

181 Mr. Walker?

Mr. Walker: I don't know why you need to ask the question. The stipulation is that.

I don't know why we need to bother the witness about it.

By Mr. Hays:

Q. Well, assuming the stipulation — Strike that.

Why were the things filed, the letters filed, in the file when you were executive vice-president?

A. They were filed to have a record of the various correspondence.

Mr. Hays: I offer Commission Exhibit for identification 14-A, B and C.

Mr. Walker: Object, Your Honor, on the grounds that the foundation required by the Federal Shop Book Rule has not been established, as I have indicated in my prior statements regarding these letters.

Hearing Examiner Kolb: Mr. Bellisime, is it your usual or unusual procedure for the sending out of bulletins such as that appearing in this document?

The Witness: Sir, you mean this one here?

Hearing Examiner Kolb: Yes.

The Witness: Well, I would say —

Hearing Examiner Kolb: Go ahead.

The Witness: I would say that I don't ever recall
182 having seen this bulletin.

Hearing Examiner Kolb: I am talking about the procedure, not the fact of the bulletin itself.

The Witness: Yes, sir, and from that point of view I don't recall seeing any others, so I won't think it was a normal procedure.

Hearing Examiner Kolb: The objection will be sustained. That applies to identification by this witness.

* * *

By Mr. Hays:

Q. I am going to show you Commission Exhibit for identification 12-A through 97. They previously have been marked for identification, ask you to examine them and state if those were records kept as records.

Will you do that, sir?

Mr. Walker: Can I have the question read back?

Mr. Hays: Were they kept as records?

Mr. Walker: You mean, as I understand the question, were these documents kept by Gentry in their files as records?

Mr. Hays: Yes.

Mr. Walker: I have no objection if the witness can
183 answer the question.

Hearing Examiner Kolb: Will you stipulate that fact?

Mr. Walker: I beg you pardon, sir?

Hearing Examiner Kolb: Will you stipulate that fact?

Mr. Walker: No. I honestly cannot, Your Honor, because—

* * *

184 Mr. Owen: I think, from the position of our side, that the problem here is this hearsay problem.

If it wasn't for the hearsay problem, I doubt that we would be having so much objection to the documents—if I understand it, the mechanical verification of them, getting them in the record; and I don't want to have us, in your eyes, trying to either win or lose minor debates here that aren't going to the real substance.

And I surely don't want to—but the problem here is that we are going to show that a great many of the things that are said here in these documents are not true.

And if we had the people on the stand that were saying them, so that we could cross-examine them, we would then say to you that they were not true, in many, many instances; and for that reason, and it is under that motivation that we are objecting to these documents as strenuously as we are.

Is that a fair statement, Mr. Walker?

Mr. Walker: I think it is, Mr. Owen.

I think, your Honor, that maybe it would expedite the proceedings here if we stipulated that these documents, as we have, came from the files of the Gentry Division of Consolidated Foods Corporation.

I think we would be further willing to stipulate that it was the customary business practice of Gentry to keep copies of incoming and outgoing correspondence as a part of the conduct of its business, and that, as such, these
185 documents are records in that sense relating to the business of the Gentry Division of Consolidated Foods Corporation.

Now, if that would be helpful in expediting this matter, we would so stipulate.

However, I would wish to make it abundantly clear that in my opinion, as a lawyer, this does not satisfy the requirements of the Shop Book Rule, and in each instance, therefore, I would want to object on that ground.

Now, if that stipulation will help counsel and expedite the proceedings, I think we would be willing to make it.

Hearing Examiner Kolb: That covers everything you have asked the witness, I believe.

Mr. Hays: I don't think so, your Honor; I don't think so. I have asked the witness if those documents there were kept as records.

Hearing Examiner Kolb: He is stipulating that they are kept as records of transactions involved.

Mr. Hays: And that my next question will be: If it was the usual and customary type of thing for them to do.

Mr. Walker: I am sorry,—

Hearing Examiner Kolb: He has testified at least a dozen times it was customary and usual for them to 186 keep records of all records written.

Mr. Hays: Then the point is made that all these letters are different; they are from different people; things of that kind; and Mr. Walker interposes that objection from time to time.

Therefore, I am asking him to examine the documents en masse.

Hearing Examiner Kolb: Well, the difficulty is that the witness is not contributing anything to void Mr. Walker's objection.

Mr. Hays: The witness was in charge, your Honor, of that division, and is familiar with the filing system, and familiar with the practice of the Gentry Division in keeping those as records, to keep a running record of what happened.

That is what he has testified to, in substance.

Mr. Walker: I think, your Honor, that this witness can testify to no more and no less than I have stated, and that is why I try to expedite, because I am sure that Mr. Bellisime could testify if we assure him that we can, and that is our stipulation, that it came from the files of the company; that it was the practice of Gentry to keep records—

copies of incoming and outgoing correspondence, and that those files, therefore, are in that sense part of the business records of the Gentry Division of Consolidated Foods Corporation.

Further than that, your Honor, I will not stipulate, 187 because I do not believe it can be established that anything else regarding the circumstances surrounding the making of these documents, and that I won't stipulate.

Mr. Hays: Well, my only suggestion, your Honor, is that we let the witness examine the documents and answer the question.

Hearing Examiner Kolb: He is going to say exactly what you are stipulating.

Mr. Walker: May I ask the witness a few questions, perhaps to clarify this up, your Honor?

Hearing Examiner Kolb: Do you have any objection, Mr. Hays?

Mr. Hays: Well, I think it would be better to wait until cross examination.

Mr. Walker: All right.

Hearing Examiner Kolb: I give up; go ahead.

By Mr. Hays:

Q. Will you look at those—

The Witness: May I say something, sir? I am very beautifully confused on this. There was an enormous amount of correspondence of letters received and letters sent out on behalf of the company, on behalf of the Gentry Division.

As an individual, I didn't see all letters that came in.

Further, that has been years back, and I am not 188 familiar with many of these files; but certainly, it has been agreed that these correspondence came from the files.

If they came from the files of Gentry, then it would seem

to me that they are definitely a matter of record, and that they are part of the history of the company.

By Mr. Hays:

Q. And those documents that you have before you, then, were kept as records, is that correct?

A. Again, I don't know that they were, sir. Certainly, it was the policy of the company to keep records of incoming and outgoing letters, and that—

Q. As a record of what?

A. A record of all the correspondence that took place back and forth.

Q. What was the purpose of keeping the correspondence?

A. Purpose of keeping the correspondence was to have a history of the correspondence, and a history of the individual accounts, a record.

Q. Was it usual and customary to keep that which was sent out and keep that which was received, is that correct?

A. That's correct, right, sir.

Q. And all those documents you have before you fall in that category? That is all I am asking you.

It is stipulated that they came from the files. I just want your testimony as to whether those documents 189 were in that category, and that they were kept as records.

A. Well, again, to my knowledge, I look at the first letter on top. It is not under my signature. I don't know that it came out of the files, or a matter of record.

Mr. Hays: That is stipulated?

Mr. Walker: This witness can't be bound by stipulation.

Hearing Examiner Kolb: He can't go as far as a stipulation.

Mr. Hays: Well, he can testify what the practice was, can't he, your Honor?

Hearing Examiner Kolb: You have that stipulated.

Mr. Hays: I am afraid we haven't, your Honor. We haven't—we have not got the fact established to meet Mr. Walker's objection that these were kept as records in the usual and customary course of business.

Hearing Examiner Kolb: Mr. Walker stipulated that, I believe, records of transactions were shown by the correspondence; am I correct?

Mr. Walker: I want to—

Mr. Hays: No, no.

Hearing Examiner Kolb: I am not trying to get you to stipulate the records the same as a bookkeeping record.

Mr. Walker: That's right.

Hearing Examiner Kolb: Or something of that sort.

190 Mr. Walker: That is precisely it.

Hearing Examiner Kolb: The stipulation is that it was kept by the company as part of the company's records of the correspondence which they sent out, and that is all this witness said.

Mr. Walker: That is absolutely right. We will stipulate to that, your Honor.

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Hearing Examiner Kolb: You are offering what documents?

Mr. Hays: Commission Exhibit 12-A through—

Hearing Examiner Kolb: 13 is in evidence.

Mr. Hays: (continuing)—97, your Honor.

Mr. Walker: The record will show, your Honor, that Exhibits 13, 73, 89, 93, 94, and 95 have already been received in evidence.

191 Mr. Hays: And you have already sustained the objection to 14-A, B, and C, so that wouldn't be included.

Mr. Walker: May I ask the witness just one or two questions, your Honor?

Hearing Examiner Kolb: Yes.

Voir Dire

By Mr. Walker:

Q. Mr. Bellisime, do you know whether or not these documents came from the Gentry Division of Consolidated Foods Corporation?

A. No, I don't.

Q. Are you familiar with the circumstances surrounding the writing of every one of these documents?

A. Well, I haven't examined all of those documents, and the first one I looked at was not by me, and I was not familiar with that letter.

Q. So there are some documents in there as to which you are not familiar with the circumstances of the writing of the document, is that right?

A. Yes.

Q. There are documents which, so far as you know, you have not seen before, is that right?

A. Not seen before, or don't recall.

Mr. Walker: Your Honor, I will object to the introduction of these exhibits into evidence at this time on the ground that none of the requirements necessary for
192 offering documents in evidence have been established by this witness or by any other witness, either under ordinary procedures for introducing letters in evidence, or under the Federal Shop Book Rule.

I further object on the grounds that the documents themselves constitute hearsay; that they are hearsay statements within the documents which are objectionable, and that many of the documents contain an opinion and conclusion, and on the further ground that as to some of these documents, there is no showing as to the authority of the author of the document, and, therefore, they should not be binding upon the Respondent in this case.

Would it help your Honor at all if I invited your atten-

tion to a couple of these documents that we deem to be particularly objectionable on the grounds that were set forth by Mr. Owen and myself earlier?

Hearing Examiner Kolb: Yes, perhaps that would.

Mr. Walker: Pardon me, sir?

Hearing Examiner Kolb: Yes.

Mr. Walker: Document No. 72, your Honor, 74, 75, 76, and 78, is a particularly bad one.

Hearing Examiner Kolb: 72, did you say?

Mr. Walker: Yes, your Honor.

In 72 I have particular reference to the hearsay statements that are contained in it.

193 You can see, your Honor, how prejudicial to us is the third and fourth and fifth lines of the second paragraph at the bottom of the page there.

Hearing Examiner Kolb: Which paragraph, please?

Mr. Walker: The — if I may, your Honor.

Hearing Examiner Kolb: This document here, you were talking about?

Mr. Walker: Yes, your Honor.

The sentence commencing, "We have brought . . .," et cetera.

Shall I get out some of these others, your Honor, and show them to you, the particular phrases I have in mind?

Maybe it will be simpler with the book I have here. It is the —

Hearing Examiner Kolb: Well,—

Mr. Walker: They are —

Hearing Examiner Kolb: As I understand, all of the correspondence is the inner-company correspondence, rather than the inter-division correspondence?

Mr. Walker: No, sir, it is not. Document 74-C is a letter from the Morgan Packing Co. to Mr. Earl Roll.

Both of these are third-person, and the document itself contains hearsay.

I know of no other theory by which we should be bound by letters, or have received in evidence here letters
194 written by outsiders that we have no opportunity to cross-examine.

Document 78, if you will, your Honor, that is a particularly bad one.

The paragraph right here, your Honor, this is a letter by Mr. Clausen to Mr. Carl Sherrod.

Hearing Examiner Kolb: On the Morgan Packing Company?

Mr. Walker: No, sir. Mr. Sherrod was a salesman, I believe, for Gentry; is that right?

Hearing Examiner Kolb: This written notation, "Morgan Packing Co.," the reference was to subject —

Mr. Walker: Like a subject reference.

Hearing Examiner Kolb: Sherrod, then, is with the company?

Mr. Walker: That's right, but Mr. Clausen here reports a conversation by Mr. Kennedy and a statement by Mr. Kennedy of what somebody else said, which is prejudicial to us and goes right to the heart of the issues, your Honor.

I just can't say how strongly I feel that there should be not evidence in this record of the ultimate issues of the case by this double-hearsay method.

May I say, also, your Honor, that in relation to this one, this one is particularly bad. It just occurs to me because we don't even know who Mr. Kennedy said said this, the maker of the statement; Mr. Hays is offering these documents for the truth of the matter asserted, is not even
195 identified in the letter.

* * *

195-213 [Commission Exhibits 12-A and 12-B, 15 through 18, 20-A through 74-B, 75-A through 84, 86 through 88, 90 through 92, and 97 were received in evidence. Mr. Hays withdrew Exhibits 85 and 96. Respondent's objec-

tions to Exhibits 19 and 74-C were sustained. The subpoena duces tecum served on Consolidated was identified as Commission Exhibit 98 and received into evidence. Mr. Hays stated that he had received all the documents required by Items 1 through 6, but that he had not yet had a chance to determine whether the documents delivered by Consolidated complied with Item 7. Mr. Walker stated that the material described in Items 8 and 9 was still being prepared by Consolidated.)

• • •

214 Los Angeles, California
October 15, 1958

215 PROCEEDINGS

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DR. ARTHUR M. PRATER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Be seated; state your full name for the reporter.

A. Arthur M. Prater.

Q. What is your home address, sir?

A. 4500 Varna Avenue, Sherman Oaks, California.

Q. Where are you employed, sir?

A. Gentry Division, Consolidated Foods Corporation.

Q. For how long have you been employed by that concern?

A. By Gentry Division, or its predecessor, since 1945.

Q. And its predecessor was Gentry, Inc.?

A. It was Gentry, Inc., and before that, C. B. Gentry Company.

Q. Will you trace the history of your employment with

those concerns, and tell what you did, and the time that you did it, what time was it you held various positions?

A. I was employed early in 1945 as research director in charge of the research, development and quality control programs of the company; my activities expanded to
216 include technical sales work; the title of the position was changed to technical director.

Let's see; after about, I think it was in 1949, I became a member of the board of directors of Gentry, Inc., with increasing part being played in production and production control.

Mr. Walker: Would you speak up a little louder, please, Dr. Prater?

The Witness: All right.

A.(cont.) The work relating to the technical field was in production control, quality control, research and development, processing techniques, raw material, and, as I mentioned, some technical sales work. Somewhere along the line, about 1953 or '54, I became vice-president of the Gentry Division. In September of 1955, I became executive vice-president and operating head of the company; and in September of 1956, I became president of the division.

* * *

216 - 223 [Mr. Hays offered in evidence Commission Exhibits 99-100, annual reports of Gentry, Inc. for the fiscal years 1949 and 1950, and 101-105, annual reports of Consolidated for the fiscal years ending 1950-1954. Mr. Walker did not object to Commission Exhibits 101 and 105. He objected to those portions of Commission Exhibits 102, 103 and 105 which described other acquisitions by Consolidated on the ground that such material was irrelevant. He also objected to certain opinions and conclusions expressed in Commission Exhibit 104. The objections were overruled and all the documents were received in evidence.]

* * *

223 By Mr. Hays:

Q. Dr. Prater, I hand you Commission Exhibit for identification No. 106 and ask you to examine it, tell me how it was prepared, and what it shows.

Mr. Walker: If you wish, we will stipulate to this, also, Mr. Hays.

Mr. Hays: All right; what was it?

Mr. Walker: What stipulation do you want?

224 Mr. Hays: You tell me. Tell me how it is prepared and what it reflects.

Mr. Walker: I will stipulate the conclusion that the data as shown on this document marked 106 is accurate data obtained from records of the Gentry Division of Consolidated Foods Corporation, kept in the regular course of business.

Mr. Hays: Who prepared it?

Mr. Walker: It was actually prepared under Dr. Prater's supervision and control by his employees.

* * *

224-235 [Commission Exhibits 106 through 119-D were identified and received in evidence without objection.]

* * *

235 By Mr. Hays:

Q. Dr. Prater, immediately prior to the acquisition of Gentry, Inc. by Consolidated Foods, what was your position?

A. I was technical director of Gentry Division — of Gentry, Inc.

Q. Were you familiar with the business that Gentry was engaged in at that time?

A. I would say yes.

Q. Will you describe that business?

A. We were primary producers of a line of dehydrated

seasonings which were, in turn, sold to the manufacturing and institutional food trade.

Q. And will you describe those dehydrated foods seasonings? What specifically did they consist of?

A. Well, we had, one, a complete line of the so-called Capsicum spices, which consist of paprika, chili pepper, chili powder, hot foods, such as Cayenne pepper, crushed red pepper, red pepper, oleoresin Capsicum, oleoresin paprika, and then a complete line of dehydrated onion and dehydrated garlic products.

In addition, we also at that time did manufacture, and still do, a relief food which is a high-protein, flavored food sold and distributed for relief.

Q. At that time, will you describe the locations of 236 the plants that processed dehydrated onions?

A. Gilroy, California.

Q. And will you describe the location of the plant that processed dehydrated garlic?

A. Gilroy, California.

Q. And will you describe the location of the plant or plants that processed the Capsicums?

A. Now, what time is this?

Q. Immediately prior to the acquisition.

A. Oxnard, California.

Q. Immediately prior to the acquisition, did you have any other plants other than at Oxnard and Gilroy?

A. Not plants that we owned, no.

Q. Immediately prior to the acquisition, that was the only type business that Gentry was engaged in?

A. We did some distribution of items processed elsewhere, but within those general lines.

Q. What did that consist of?

A. I believe we distributed some other spices, other seasonings, in a small way. It was not a substantial part of the business.

Q. Will you describe how dehydrated onion is prepared?

A. May I amend that other? We also engage in farming for the production of items for these processing plants, and for the fresh market.

237 Q. In other words, you grow onions and garlic?

A. We do not grow onions and garlic; we grow Capsicum peppers, both for dehydrating and for the fresh market.

Mr. Walker: So the record will be clear, we are only talking about the time just prior to the acquisition, is that right?

Mr. Hays: That is right.

The Witness: Yes.

By Mr. Hays:

Q. Will you describe how dehydrated onion is processed, and tell us the end forms that it takes, immediately prior to the acquisition?

A. The raw onions are taken into the plant, are put through what we call the pre-processing steps, which consist of trimming, cleaning, coring, removing the base, the tops, as much of the skin as possible; they are then sliced, spread onto trays, the trays stacked on cars, the cars put into tunnels, dehydrated through either one, two, or three-stage dehydration process; the dehydrated product is then further segregated and classified to remove further defects, make the various size fractions, and ultimately packaged in final containers for shipment to the customer.

Q. Now, when you say prepared in size fractions, what do you mean by that?

A. The dehydrated onion, as it comes out of the de-
238 hydration process, consists of a heterogeneous mass of particles, some large, some small, some skins still remaining, some defects, and in our milling we segregate the particles down to whatever particular size we use to sell them in, and grind some for powder.

Q. I would like to know about the sizes; what sizes did you sell, dehydrated onion?

Mr. Walker: At what time are we speaking about now?

Mr. Hays: Still immediately prior to the acquisition.

Mr. Walker: I wonder if the witness understood that in his last answers?

The Witness: Yes.

A. We sold at that time in essentially a line of sizes from, you might say, as fine a powder as we could conveniently prepare, to as large a piece as we could conveniently prepare.

By Mr. Hays:

Q. In other words, the sizes that you sold or prepared the dehydrated onion in were sizes that were determined by the purchaser; that is, whatever size he wanted, you would make that size, is that correct?

A. To the best of our ability.

Q. Immediately prior to the acquisition, will you describe the method by which dehydrated garlic was processed?

A. Essentially the same as dehydrated onion, with minor variations due to the difference in the nature of the 239 garlic as compared to onions.

Q. And will you describe the manner in which the Capsicums are prepared; immediately prior to the acquisition?

A. The Capsicum pods or the fruit are harvested, or were harvested, were brought into the plant, put through a pre-processing washing, sorting, and sorting to remove defects, placed on trays, the trays were stacked on cars, the cars placed into tunnels, and dehydrated, following which the dehydrated whole pod material was placed in storage in the warehouse.

Q. What were these dehydrated products used for?

A. The dehydrated pods, as described in the dehydra-

tion process, were used either for sale as such, or were further ground and processed into paprika, chili powder, chili pepper.

Q. What were they used for by the people or companies that purchased them from your company, what is their use?

A. The pods would be used by manufacturers of chili pepper, chili powder, paprika, or by manufacturers of, say, canned chili con carne, used as seasonings in those products where chili seasoning was needed.

Q. And the dehydrated onion would be used by processors of food products who needed dehydrated onion as a seasoning in their product?

A. It would be used by a user who wanted onion flavor as a replacement of raw onion, usually.

240 Q. Now, what about the garlic; who would use dried, dehydrated garlic?

A. Those who wanted the flavor of dehydrated garlic in their final product.

Q. Tell us what type of food processors or processors of what type of foods used dehydrated onion and garlic in the preparation of their foods?

A. I would say the vegetable canners, the tomato processors, soup manufacturers, meat packers, specialty manufacturers of specialty crackers, certain dressings, virtually in any product wherein you wanted an onion or a garlic flavor.

Q. That was true immediately prior to the acquisition, that is still true, isn't it?

A. Yes.

Q. And those were the type of customers that Gentry, Inc. sold its dehydrated products to, and which they have continued to sell them to since the acquisition, is that correct?

A. Yes.

Q. Are you familiar with the sales area of Gentry, Inc. immediately prior to the acquisition of it by Consolidated Foods?

A. You mean geographical area?

Q. Yes, sir.

A. Yes.

Q. Will you describe it, please?

A. It was essentially nationwide in the United
241 States, with smaller, some smaller, some small export business.

Q. And has that continued to be the sales area up to the present time?

A. Yes.

Q. Immediately prior to the acquisition, was Gentry, Inc. affiliated with any other companies?

A. You mean in a corporate or a legal sense?

Q. Yes.

A. Not that I know of.

Q. Since the acquisition, has there been any change in plant location—

A. No.

Q. —or products processed by the Gentry Division of Consolidated Foods?

A. Well, there has been no change in plant location. There have been new products developed, and additional products are being produced.

Q. What new products have been developed?

A. We have entered into the production of pureed garlic, I believe, since the acquisition; we have entered into the production of canned pimientoes, canned green chilis; we entered into the distribution and handling of imported paprika and of diced bell peppers. Some of those we may have been into years ago, but at the time of the acquisition, I believe we were not in those. We have entered into

242 a few other relatively small items which we started and then stopped; as an example, dehydrated horseradish, and there are possibly others.

Q. Immediately prior to the acquisition, were all of these products sold by salesmen employed by Gentry?

A. Essentially, although the word "all," we have a few house accounts. We have brokers who do some selling, and we have direct salesmen.

Q. The bulk of the selling was by direct salesmen, I take it?

A. I would say yes.

Q. Did a salesman sell a particular product, or did he sell the full line of products?

A. He sold the full line.

Q. Is that still true today?

A. Yes.

Q. Other than the plants at Gilroy and Oxnard, I believe that you mentioned, immediately prior to the acquisition, did Gentry have any other branches?

A. Well, we have our national, our headquarters office in Los Angeles, we have sales offices and warehouse stocks elsewhere. We have the farming operation elsewhere.

Q. You have no other processing operations; has there been any change?

A. There has been no significant change, no.

Q. Since the acquisition of Gentry by Consolidated Foods, are you familiar with any effort being made to 243 obtain the aid of the Consolidated—members of the Consolidated Foods organization to help sell Gentry products?

A. Are you asking am I now familiar?

Q. Are you familiar, yes.

A. I would say yes.

Q. Will you describe the type of aid that were sought, if any?

A. Well, I believe in some instances we asked other

divisions of Consolidated Foods for assistance in getting a hearing for our men to be allowed to come in and talk over our products and attempt to get an audience with the various suppliers to Consolidated Foods.

Q. Suppliers of food products to Consolidated Foods, is that what you mean? Is that what you mean by "suppliers"?

A. Yes.

Q. After the acquisition, was any attempt made on your part, or by anyone in the Gentry Division, to determine which of its potential customers supplied Consolidated Foods with finished food products?

A. There was no attempt made on my part, and I don't believe there was any attempt on any other part of the Gentry employees.

Q. Does the Gentry Division have any records that indicate whether or not its purchasers of dried food seasonings also sell to Consolidated Foods Corporation?

Mr. Walker: Will you read the question?

(Record read.)

244 A. I believe there have been some documents produced here in that general area.

We have no records, as I understand the question, we have no records other than what have been produced here.

245 By Mr. Hays:

Q. Since the acquisition have the number of accounts of purchasers of dried food seasoning increased or decreased or remained the same?

A. The purchasers of dried seasoning?

Q. In numbers?

A. I would say it has increased.

Mr. Walker: This is purchased from Gentry, is that right?

Mr. Hays: Yes.

By Mr. Hays:

Q. Are you familiar with various concerns that produce

capsicums similar to those produced by the Gentry Division of Consolidated Foods?

A. I am familiar with some of them.

Q. Will you name them, the ones you are familiar with, and what they produce and sell?

A. In a general way I am familiar with the Chili Products Corporation who produce, I believe, a full line of capsicums products as well as certain other bases.

The Cal-Compack who produce a line of dehydrated capsicums including paprika and hot goods.

The Santa Maria Chili Products Corporation or Company, who produce a line of chili pepper, chili powder, paprika, and I believe other dehydrated vegetables.

246 The McClintock-Stern Company who are a general spice house but who also produce capsicum items. Then there are a whole host of dealers, handlers and producers of hot peppers using domestic and imported spices. And then there are your national spice houses, who produce and process and distribute the capsicum spice line.

Mr. Walker: Distribute what?

The Witness: Capsicum spice line. Then, in addition, there are foreign producers.

By Mr. Hays:

Q. By foreign producers, you mean those that produce it in foreign lands and sell it in the United States?

A. Well, yes. There is a production of raw material in foreign countries, some of which does come into this country, and in turn there is a very small exchange of products from this country into certain foreign countries.

Q. The importation is small, did I understand you to say that?

A. The importation is small of certain finished items. It is large on certain items and large on certain raw materials.

Q. Are you familiar with the relative sales positions of the companies that you have mentioned in point of view of volume of sales?

A. No, I am not.

Q. Are you able to state how the sales of the Gentry Division of Consolidated Foods in capsicums compares
247 with the sales of the remainder of the industry?

A. I am not.

Q. Since the acquisition, have there been any changes made in the operation of the processing of products by Gentry Division?

A. Yes.

Q. Will you describe that change?

A. Well, all of our processing operations are under constant scrutiny and study, and we have made changes, improvements, wherever possible.

We have made changes in the dehydration techniques, the grinding, blending techniques, the warehousing techniques, virtually all of our operations.

Q. Has there been any change in the production facilities themselves?

A. Yes.

Q. Will you describe those changes?

A. We have made changes in the equipment for the harvesting of the raw crop, in the handling of the raw crop, in the pre — the preparation stages, the processing stages. Actually, during the dehydration steps and in the warehouses of virtually all of our products.

Q. Will you describe with specificity just what those changes were?

A. As an example, in the capsicum field we have
248 gone from the use of picking techniques, harvesting in bags or in cans, to harvesting in bulk of either the bulk tin or bulk truck. The product is brought into the plant

and dumped and handled in bulk instead of smaller containers.

We have improved the washing, the handling, the equipment; the product in the capsicum, the chili plant is no longer dried as whole pods. It is sliced and cut and stacked on to trays and dried as cut material.

A product now, when it comes from the dehydrator, is no longer stored in whole form, but it is ground immediately and stored in ground—in dried form.

We have also carried out a very extensive crop research and development program to improve the raw material.

Mr. Walker: I didn't hear the last part of the answer.

The Witness: We have also carried out a very extensive crop research and development program to improve the raw material.

By Mr. Hays:

Q. Have new plant facilities been added?

A. Yes.

Q. Will you describe it?

A. We have added equipment necessary to carry out the conversion of harvesting from raw to—I'm sorry—from the hand labor, the high-cost hand labor small unit 249 operation, to a bulk operation.

We have added equipment to handle the product in the plant as a bulk product.

In the onion and garlic plants we have increased our dehydration capacity and have made a similar conversion from harvesting in converting from a high cost hand operation to a more nearly mechanized operation.

Q. Were the changeovers from the hand operation to the mechanized operation, and were these other changes, designed to increase the efficiency of your operation?

A. They were.

* * *

253 By Mr. Hays:

Q. Dr. Prater, to what extent are you familiar with the customers of Gentry Division; do you have much to do with them?

A. In a general way I am familiar with many of them.

254 Q. Are you familiar with Wyler & Company of Chicago, Illinois?

A. Yes, in a general way.

Q. Do you know whether or not that company sells any finished food products to Consolidated Foods or any of its divisions?

A. I believe I have seen some references in the correspondence in—See, in connection with this case we have looked at a lot of documents, and I believe I have seen some correspondence in there that they do sell Consolidated Foods. I am not sure.

Q. What position does Mr. Farrell hold with your company?

A. He is vice-president in charge of sales.

Q. Do you think he would be more familiar with this than you?

A. I know Mr. Farrell is more familiar with sales details than I am.

* * *

254-256 [Commission Exhibit 120A-C was offered and received in evidence without objection.]

* * *

257 *Cross Examination*

By Mr. Walker:

Q. Dr. Prater, would you please describe in some detail the different classifications into which the purchasers of products manufactured by Gentry fall?

A. It would be manufacturers of food products, it would be distributors of food products to the institutional trade, users of the institutional items such as White Castle Hamburger stand chain, spice grinders and repackagers who repackage and sell to the retail trade and to the institutional trade; and I believe that covers it.

Q. Now, would you please state what you include within this classification of manufacturers of food products?

A. Well, there would be the tomato packers, the catsup packers, canned spice manufacturers, processors of meat products, dressings, crackers, and certain biscuit items.

Now, this was packers?

Q. Manufacturers of food products.

A. Manufacturers of food products. Any manufacturer who used or could use dehydrated onion in his processing operations including manufacturers as of such items as dehydrated soups.

Q. This would be true also as to garlic and also as to capsicums, is that correct?

A. Yes.

Q. Now, you said another classification was the dis-
258 tributor to the institutional trade. What did you mean by the institutional trade, Dr. Prater?

A. Large restaurants, commissaries, steamships, any large food servicing institution.

Q. Do I understand your testimony to be that Gentry sells to these institutional users both directly and through distributors?

A. Yes.

Q. Now, you mentioned the classification called spice grinders. What are the spice grinders, Dr. Prater?

A. Spice grinders are concerns who usually package a full line of spices for retail sale such as your national brand lines of which you find on the spice racks in any store.

Q. And these purchasers get from you dehydrated onion, garlic or capsicums and use them in the spices that they grind and sell to others, is that right?

A. Either use them in the spices they grind and sell or repackage them in the form of which they purchase them from us.

Q. And finally you mentioned repackagers who resell to institutional users and the retail trade, is that right?

A. Yes.

Q. Now, does Gentry do any selling to the Government?

A. We do.

Q. Would you please describe the type of sales that Gentry makes to the Government?

259 A. We sell dehydrated onions to the Government, packed according to military specification. Usually on the basis of a contract, on a bid and contract basis.

We have sales of certain other items, I believe canned pimientoes, and we have at times sold chili powders and other seasoning agents to Government agencies.

Q. Has Gentry been selling these products to these various classifications of users continuously since 1946?

A. To the best of my knowledge, since I have been with Gentry, yes.

260 Q. Now, Dr. Prater, how would you characterize the amount of Gentry sales to the Government? Would you say that those sales are substantial or small?

A. That would depend upon the year. Some years, they become substantial. Others, small and, at times, there are no sales.

Q. Taking this classification of institutional users that you sell either directly or indirectly, are their purchases from Gentry of onion, garlic and Capsicum products substantial or small?

A. I would say they are substantial.

Q. What percentage of your total sales would you say on the average are directly to institutional users?

A. That would be directly to, rather than repackaged by a customer, and then sold to the institution, or would it include both?

Q. Let's take, first, the direct sales to the institutional user.

A. I would estimate on some items between 10 and 20 percent.

Q. Now, as to these various users that you have described, Dr. Prater, is it true that some of these users could not sell their products to Consolidated Foods Corporation?

A. Now, this is the — would you repeat the question, please?

Q. As to these various users that you have described of Gentry products, is it true that some of these users could not sell their products to Consolidated Foods Corporation?

261 A. I believe that is true, yes.

Q. That would be true, certainly, of the institutional users, would it not?

A. Exactly so.

Q. Now, it is true also, is it not, Dr. Prater, that is, to all of the users that you have described, that very many of them do not sell their products to Consolidated Foods Corporation, is that right?

A. To the best of my knowledge, that is correct.

Q. It is true, also, is it not, Dr. Prater, as to these various users that you have described, many of them are in direct competition with Consolidated Foods Corporation, is that right?

A. That is correct.

Q. Dr. Prater, has Gentry's sales to institutional users increased, decreased, or remained the same since 1946?

A. I would say it has increased.

Q. Has it increased substantially?

A. I would say yes.

Q. Dr. Prater, would you please describe in general terms the growth of the dehydrated onion and garlic business since World War II?

A. At the end of World War II, there was an existing onion and garlic dehydrating business. There was excess plant capacity, and there was a temporary over-pro-
262 duction, and you might say an unsettled period.

The business, the industry as a whole went through this period, and expanded uses began coming in. The customers to whom we sell developed new products, and the industry with, I believe, minor interruptions, has had a steady, healthy growth since.

During the Korean crisis, there was a temporary increased activity on the part of government in purchasing dehydrated onions for the government. The number of products using dehydrated onions increased greatly, and the entire trend towards table-ready foods that had taken place during the war has greatly expanded the use of dehydrated onions and garlic.

Q. That growth trend has been reasonably constant since the end of World War II, has it?

A. Yes.

Q. During this period, Dr. Prater, has dehydrated onion and garlic replaced at all the use of raw onion and garlic?

A. Yes.

Q. Would you please describe in your own words this conversion process; that is, of a user from the raw product to the dehydrated product?

A. Well, in the case of a commercial user, it would be often a process, would be a process of our men going in working with the technical departments, the production departments, demonstrating economies and quality ad-
263 vances in the use of dehydrated onion and garlic, as compared with the raw.

The economics and the quality control factors are sub-

stantial, and the conversion of raw to the dehydrated has been abreast, you might say, which we have kept steady pressure. We have worked very extensively in that field.

There has been the development of an approach to the conversion of the housewife to the use of these dehydrated products through, in our case through packers who are selling to the housewife trade.

Q. Dr. Prater, in your opinion is there any use to which the raw onion and garlic can be put that the dehydrated product cannot?

A. Is there any use to which the raw product can be put to which the dehydrated cannot?

Q. Let me rephrase that question, Dr. Prater, and I think it would be a little more clear and a little more explicit.

Is there any use to which the dehydrated product can be put that the raw product cannot?

A. To my knowledge, no.

Q. And that is applicable to both onion and garlic?

A. Yes.

Q. On your direct examination, Dr. Prater, you were asked by the government counsel about the trend in the number of customers purchasing dried food seasoning from Gentry since the time of its acquisition by Consolidated.

Do you recall your testimony about that?

264 A. Yes.

Q. I believe you testified generally that there was an increase in the number of customers purchasing dried foods seasoning from Gentry since the acquisition, is that right?

A. I believe I did, yes.

Q. Now, as between the time of the acquisition and the present time, has there been overall an increase in the number of customers? By this I mean, Dr. Prater, as of this time, is Gentry selling more customers in numbers of customers than it was selling at the time of the acquisition?

A. I would say at this time that we may be selling a few more. It would be approximately the same.

Q. Will you please describe to the best of your ability the trend in the number of customers which Gentry has sold to in the period from the acquisition of Gentry by Consolidated to the present time?

A. The trend from the time 1951 to date, to the best of my knowledge, showed an increase to a certain peak, following which it has shown a definite decrease, and a decline; and I believe we are about the same place now as we were at the time of the acquisition.

Q. Is there an explanation for this trend, Dr. Prater?

A. Yes, I believe —

Q. What is that explanation?

265 A. We embarked on a very vigorous sales campaign. We hired a young man in New York, moved him to California as the national sales manager, and embarked on a rather active campaign, methodically soliciting business throughout the United States.

We increased our sales force. We increased the efficiency of our coverage, and we ferreted out every account we could.

We then made a very critical study of the cost of doing business, of the cost of servicing these accounts, and decided that we wanted to alter our policy and alter the type of selling, and we have cut down the number of accounts and have put more attention on the bigger accounts, and have either dropped the smaller accounts or have diverted them to other customers of ours who sell them through their operations.

Q. In the course of your direct examination, Dr. Prater, you described a number of the producers of Capsicum products. Do you recall your testimony in that area, Dr. Prater?

A. Yes.

Q. You mentioned in the course of that testimony the foreign producers of Capsicum products, and you quite briefly indicated the type of products that were produced by them, and their sales in this country.

Would you please at this time, Dr. Prater, describe in more detail, please, the extent of the foreign products of Capsicum products, and the sale of those products in the United States?

266 A. Capsicum is a broad term which covers, from a practical standpoint, the paprika industry, the Cayenne, the hot red peppers, the hot goods industry as well as the chili pepper, chili powder type products.

There is a very substantial production of hot goods from many non-U. S. sources into the United States. These customarily range from Japan to the African countries, Mexico, some South American countries.

The paprika industry up until recently was largely centered in Spain and certain other European countries. There have been the developments of a domestic paprika industry, and the imports of paprika are very substantial.

Most of the paprika imports are from Spain.

Q. Now, these products that are imported that you have described are sold in direct competition with products manufactured by Gentry, is that right?

A. That is correct.

Q. Also, in the course of your direct examination, Dr. Prater, you testified to a number of changes or improvements in the harvesting, handling, processing, dehydrating and preparation of the onion, garlic and Capsicum products, is that right?

A. That is correct.

Q. You testified that a number of these changes occurred in relation to Gentry since 1951, is that right?

A. That is correct.

267 Q. Would you please describe, Dr. Prater, the extent to which changes of this type were made in the dehydration and production of the onion, garlic, and Capsicum products in the years prior to 1951?

A. Well, since 1945, where my direct knowledge started with Gentry, we have continually sought to improve our products, our processes, and our techniques of handling.

I would say that on a qualitative basis, we have proceeded in making changes and improvements as fast as we can. We made as many of them prior to '51 as we could, and we are continuing.

The industry as a whole is developing. The industry is not standing still, and we are trying to keep abreast or ahead of the industry, and have ever since I have any knowledge of the company's activities.

Q. Would you say that you made any more improvements since 1951 than you did before 1951?

A. I would say that the eight years since then, we have made many improvements. We have grown. The industry has grown. We were a smaller industry before 1951.

Q. You built a new plant prior to 1951, didn't you, Dr. Prater?

A. We built a new plant in Oxnard in 1946, and completed it in 1950.

Q. And that plant was for the manufacture of what products, sir?

A. That was for the complete processing of Capsi-
268 cum products, which, I believe, was the first plant Gentry ever owned in that field.

Q. Dr. Prater, in the period since the acquisition of Gentry by Consolidated Foods Corporation, as to how many customers of Gentry, was there either a contact or a known suggestion of a contact by either Gentry or Consolidated

representatives in any way involving the Gentry-Consolidated relationship?

Mr. Hays: May I have the question read back to me, first? I didn't follow it.

(Record read.)

A. I would say from maybe 20 to 25.

By Mr. Walker:

Q. How many customers did Gentry have on the average in each of the years 1952 to 1955, Dr. Prater?

A. I would say 5,000 or more.

Q. Do you have any personal knowledge of any incident where any representative of Gentry or Consolidated stated to a customer or potential customer of Gentry, orally or in writing, that Consolidated Foods Corporation would buy less from that customer unless the customer bought from Gentry?

A. I do not have any knowledge.

Q. What would be your opinion, Dr. Prater, of the effectiveness of any such threat, if any had been made, either by Gentry or Consolidated representatives?

Mr. Hays: I am forced to object to that, your Honor.
269 I have been very, very lenient with the questions so far. I am forced to object to that.

Mr. Walker: I think the—

Mr. Hays: It is self-serving, and has no probative force, and is an opinion, and it would have the effect of usurping the effect of the Commission and the Examiner. That is the ultimate matter which will be determined when all the evidence is in. To have the record cluttered up with that type of self-serving statement would, to my mind, be improper.

Mr. Walker: Your Honor, I think that the testimony by this witness demonstrates his experience and activity in this field, and his position and that experience gives him the

right to have an opinion in this area which would be of relevancy to these proceedings.

I think that the weight which should be attached to that opinion is a matter that the Hearing Examiner can properly judge, but I do think it is proper to have this witness give his opinion.

• • •

270 Hearing Examiner Kolb: I will sustain the objection of that question, on the ground set forth by counsel.

• • •

By Mr. Walker:

Q. In your opinion, Dr. Prater, would the suppliers of Consolidated with which you had experience resent a threat of the type that I have just described in the prior question?

Mr. Hays: Same objection.

Hearing Examiner Kolb: I will sustain the objection.

271 Mr. Walker: Your Honor, at this time I would like to state for the record this in the nature of an offer of proof, if I may: That if this witness were permitted to testify in response to these questions, that he would testify that in his opinion, the threats or coercion of the type that I have described would be ineffective; that the customers would resent it, and that is just so the record will be clear as to the evidence I was trying to get in at this point.

By Mr. Walker:

Q. Dr. Prater, do you have any personal knowledge of any incident where Gentry made sales to a customer as a result of contacts made with that customer by any Consolidated personnel?

A. No, I do not.

Mr. Hays: You don't have any personal knowledge, is that your answer?

The Witness: That's right.

By Mr. Walker:

Q. Do you know of incidents where Consolidated personnel contacted Consolidated suppliers who were actual or potential customers of Gentry, is that right?

A. Yes.

Q. I beg your pardon?

A. Yes.

Q. What to your knowledge was stated by the Consolidated personnel in these incidents of which you have knowledge?

272 Mr. Hays: Just to make it clear, were you there?

The Witness: No, I was not there.

Would you read the question back?

By Mr. Walker:

Q. What, to your knowledge, was stated by the Consolidated personnel in such instances?

Mr. Hays: Well, I am going to make my objection. It is a little premature, but he wasn't there, and I know it is hearsay, so I have got to object on the grounds of hearsay.

Hearing Examiner Kolb: What Consolidated representatives said to the customer?

Mr. Walker: That is right, your Honor.

Hearing Examiner Kolb: I will sustain the objection.

Mr. Walker: Well, your Honor, may I just say that I very seriously think that we should be given the opportunity to put this evidence in? The documents—

Hearing Examiner Kolb: You might have a basis for this on your defense, but I don't think you have a basis laid now by this witness.

Mr. Walker: Well, but, your Honor, my approach to this, if I may state it, is that your Honor has permitted to be placed in evidence in this record the documents which contain hearsay of the very type that we are now talking about, and if this witness has knowledge of what was stated by

273 the Consolidated personnel in such instances, then I think he should be permitted to state it.

Counsel supporting the Complaint has the perfect opportunity on redirect examination to discredit that knowledge in any way that he wishes, but if the witness does have knowledge, I think that we should be permitted to

bring out the same sort of thing on examination that has been brought out on these documents.

Mr. Hays: The situation is not comparable at all. Our documents did not go into hearsay; they went in as exceptions to the hearsay rule. They were documents that were prepared by officers of the Respondent a long time before this litigation arose.

Now, this situation is entirely different. Here is a man on the stand for purposes of litigation stating something somebody else said to somebody, and he wasn't even there.

Mr. Walker: The same thing is true, your Honor, of these statements that have gone into the record, and this witness, your Honor, is president of his company. He has knowledge acquired through his official duties of these instances, and I think he should be permitted to state that knowledge.

Hearing Examiner Kolb: I will sustain the objection.

Mr. Walker: Well, I will make an offer of proof, your Honor, that if this witness were permitted to testify in this area, he would testify that his knowledge of these incidents is that where such a contact was made by Consolidated
274 personnel, that the contact was on the basis of a request for the supplier to give consideration to the Gentry products in the sense of giving a hearing to the Gentry salesmen.

By Mr. Walker:

Q. Dr. Prater, did any Gentry salesmen ever have authority to say to a customer or potential customer that Consolidated would reduce its purchasing from the customer if the customer did not purchase Gentry products?

A. No, they did not.

* * *

275 Q. Dr. Prater, has Gentry lost any business as a result of its relationship with Consolidated Foods Corporation?

A. Yes.

Mr. Walker: Your witness, Mr. Hays.

Redirect Examination

By Mr. Hays:

Q. Well, perhaps I had better take up what is fresh in my mind here, your last question. What particular business did they lose?

276 A. Offhand, we lost the Sexton Company account, we lost the Richmond-Chase Company, and I believe there are many references in the call reports to other accounts that we have lost, of people who will not buy from Gentry because we are part of Consolidated Foods.

Q. Now, Sexton Company and Richmond-Chase Company, is that all you remember?

A. Specifically, from a standpoint of accounts that I am sure we have lost, yes. There are many other references in the call reports, as I recall them.

Q. Will you produce those call reports that you refer to?

A. Those that we have I will produce.

* * *

277 By Mr. Hays:

Q. Now, with reference to the Sexton Company that you know about, Mr. Prater, where are they located?

A. Chicago, Illinois.

278 Q. What type of business are they in?

A. They are in the wholesale distribution business.

Q. They compete with Consolidated Foods in wholesale distribution, don't they?

A. I believe they do, yes.

Q. What type of products do they sell or distribute?

A. I believe they distribute a line of items to restaurants and institutions.

Q. And in that they are in direct competition with the Division of Consolidated Foods?

A. That was, I believe, the reason they gave for stopping business with us.

Q. When did that occur?

A. To the best of my knowledge, immediately at the time of the acquisition, or close, in close proximity.

Q. And what did they purchase from you, from Gentry?

A. They purchased, I believe, primarily No. 10 tins of dehydrated onions. I believe there were certain other items in addition.

Q. Now, insofar as Richmond-Chase Company is concerned, where are they located?

A. In San Jose, California.

Q. What type of business are they engaged in?

A. They are fruit and vegetable processors.

Q. Do you mean canned fruit?

279 A. Yes, canned fruits and vegetables.

Q. Is the Division of Consolidated Foods also, do they also process canned fruit?

A. Some divisions—

Q. And sell canned fruit?

A. Some divisions do, yes.

Q. And was Richmond-Chase Company in competition with Consolidated Foods in the sale of fruit products?

A. I believe that was the reason given our man as to why they stopped business with us.

Q. And when did they stop?

A. I believe they also stopped at just about the time of the acquisition, or shortly thereafter.

Q. And what did they purchase from Gentry?

A. I think it was dehydrated onions and garlic and certain capsicum items.

Q. Now, you refer to an indefinite loss of business in that you couldn't name the companies, is that correct, you didn't know which other companies you lost?

A. I could not name all of them; I have seen and heard through the years many references to the adverse opinion of some of our former customers after the acquisition.

Q. All right. When was the last loss of this type of busi-

ness, that is, as a result of the relationship of Gentry with Consolidated Foods?

280 A. I would say the last time Sexton bought, we lost the last order they bought.

Q. When was that?

A. I don't know; they are probably still selling onions. Any sale that Gentry could have had and does not have is a loss to Gentry, and if Sexton is still selling onions, buying from somebody else, and is not buying from Gentry, it is a loss to Gentry.

Q. That is correct. Well, when was the date of loss, I mean actual loss,—not hypothetical loss,—actual loss; what is the most recent loss of this kind that you can think of?

A. I don't know that I—I don't want to argue with the words "actual" or "hypothetical." The two cases that stand out in my mind as direct losses with the Sexton Company and the Richmond-Chase Company,—I believe there is another, thinking it over, I think there is another one, Witwer Grocery Company, and I think that was some time after these other two.

Q. When.

A. I would say probably 1952 or 1953, but I am not sure; in there.

Q. What kind of business was this Witwer Grocery in?

A. I believe they are also in the wholesale; wholesale distributors.

Q. The sale and distribution of food products?

A. That I believe was the reason given our men as
281 to why we lost the business.

Q. Now, that change occurred some time in 1952?

A. Which change, sir?

Q. The change whereby the Witwer Grocery Company stopped buying from Gentry.

A. I am not sure; it is since 1951, and I am not sure exactly when.

Q. Was it later than 1952?

A. It could have been.

Q. Was it later than 1953?

A. It is possible, it could have been.

Q. Later than 1954?

A. I doubt it, but it is possible.

Q. Is it possible you lost them this year?

A. No.

Q. Is it possible you lost them in 1957?

Mr. Walker: The witness has answered that he doesn't know when this occurred, Your Honor. I think we are wasting time here with this step-by-step procedure that counsel is going through. I will object on the grounds that the question has already been answered.

Hearing Examiner Kolb: The objection will be overruled.

The Witness: Well, in connection with this case, we have looked at thousands of documents, we have looked at
282 lots of records, we have searched our files, we have done this in order to comply with the requests that were given to us, and I don't know when we lost this business any clearer than I have stated it.

By Mr. Hays:

Q. Do you know what type of products this company formerly bought from Gentry?

A. I believe it was the No. 10 tins of onions for distribution. I am not certain of that.

283 Q. Of the three companies that you referred to, do you know the volume of purchases that they made during the years which they were sold by the Gentry Division, or Gentry, Inc.?

A. You mean do I have those figures in my head now?

Q. Yes.

A. No, I do not.

Q. Are they available; can you determine that from your records?

A. I am sure we can.

Mr. Hays: Will you produce those, also, Mr. Walker?

Mr. Walker: Would you tell me a little more precisely what is it you want as to these customers?

Mr. Hays: The annual volume of sales.

Mr. Walker: The annual volume of sales?

Mr. Hays: For two years prior to the date of loss.

* * *

284 By Mr. Hays:

Q. Do you recall your testimony with reference to the sales by the Gentry Division to the United States Government in that it varied from time to time?

A. Yes.

Q. Now, as a matter of fact, hasn't it been your practice to bid on Government contracts only when you had material available over and above the requirements for the trade itself?

A. Well, we bid on Government contracts depending upon the timing of the letting of the bid announcement in relation to the delivery and in relation to available raw materials. Now, if the Government comes in with a bid which requires delivery under conditions where we cannot contract or purchase additional raw materials, then we determine the extent to which we bid by available raw material and available finished product we have.

If we have ample time, where we can determine in advance and contract for the raw material, then we bid for all we can handle from a production and sales standpoint.

Q. But you don't bid on Government business where that involves a sacrifice of available goods insofar as the remainder of your customers are concerned?

Mr. Walker: Excuse me; could I have the question read?

(Record read.)

Mr. Walker: I am not sure I understand the question,
285 but if the witness does—

The Witness: I don't understand, first, what you

mean by "sacrifice," and, second, we sell the Government more than one commodity, more than one product, and what might be true of one might not be true of another.

By Mr. Hays:

Q. The point I am trying to bring out, and I am sure it is correct, is that you at all times maintain an adequate inventories to take care of your classes of customers first; then, if you have excess supplies of inventory, or you can readily obtain them, you will then bid on Government business, is that correct?

A. I don't think I would express it quite that way.

Q. Well, will you make any amendments to that that you would care to make; wherein am I not correct?

A. Well, if you take the case of dehydrated onions which are procured in time of an emergency situation in large quantity, and, in peace time in less quantities, we will treat each Government bid just like any other potential order, and if the bid is less by the Government under such conditions that we cannot adequately procure raw material, then we will not bid on or accept a Government bid if it means selling products which we have on contract for our regular customers.

Insofar as possible, we have worked with the Government urging them to give sufficient lead time so that we can
286 contract for the raw material in an orderly fashion, and under those conditions, we bid up to our limit to produce.

Now, that is true of dehydrated onions.

Q. Of dehydrated onions?

A. Yes.

Q. Is that the only type of Government bid business that you have bid on?

A. That is the major type.

Q. Dehydrated onions?

A. Yes.

Q. Do you recall your testimony this morning with ref-

erence to a gross trend that has been constant since World War II in relation to the change from raw onions to dehydrated onions, fresh onions to dehydrated onions?

A. There was some questions and answers concerning that. I don't think I would have expressed it quite the way you said it.

Q. All right; well, I am directing these questions to that phase of your testimony. Now, since World War II, I believe that you stated that you have been attempting to get people that wanted onion flavor in their products to change from raw onions to dehydrated onions; is that correct?

A. That is correct.

Q. And I believe that you stated, in substance, at least, that there has been a trend away from raw onions to
287 dehydrated onions, is that correct?

A. Well, the usage of dehydrated onions has increased, and we have been able to convert, and the industry, I believe, has been able to convert from raw onion users, from users of raw onions over to dehydrated onions; whether there is actually less pounds of raw onions consumed in relation to prior years, I don't know. Our industry is growing, and the use of our products is growing.

Q. Now, are there advantages to using dehydrated onions, rather than raw onions?

A. Yes.

Q. What are they?

A. Advantages of economy and advantages of quality.

Q. It is cheaper to use them, is that correct?

A. Yes.

Q. And will you describe the quality advantages?

A. The dehydrated onions have a uniform flavor, they have relatively indefinite storage life, they do not deteriorate in storage, the user can take the same formula, use the same amounts each time, come out with a uniform product, the labor of handling raw onions, the preparation labor and

the handling labor is eliminated, the storage problem of the raw product is eliminated, and a large share of the growth and the consumption, the increase in the consumption of dehydrated onions is related to the economies and the quality features involved.

288 Q. Now, do you know of users of raw onions in their products for flavoring purposes?

A. Yes.

Q. Do you know from what source they buy their raw onions?

A. Well, put it this way: I have been told by some companies that they use raw onions.

Q. What are the sources of raw onions for use as a food seasoning?

A. What are the sources of raw onions?

Q. Yes.

A. Mother earth.

Q. From the point of view of distributors of raw onions?

A. Either the produce markets throughout the United States, or by direct contracts with the growers or the shippers.

Q. Would you say that it is a true statement that if a person wants to use raw onions, he would most likely be dealing with farmers or produce merchants?

A. Depending on the quantity he uses, he could deal either with the produce merchant or an onion shipper, or he could deal directly with the grower.

Q. Do you recall the four categories of customers that you referred to this morning, manufacturers of food products—that was the first category; distributors of food products, that was the second category; institutional users, was that the third category; and the fourth category was what, sir?

289 A. Let's see: Manufacturers, distributors—

Mr. Walker: The fourth one was spice grinders and repackagers, if I can be of any help.

By Mr. Hays:

Q. Are those the only categories of customers you have?

A. I think that pretty well covers—

Q. Now, what do you sell to spice grinders and packers?

A. Spice grinders and repackagers, we could sell our complete line of dehydrated onions, dehydrated garlic, and Capsicum spices.

290 Q. As a matter of fact, since 1951 has your percentage of sales to this class of customers increased, decreased, or remained the same?

A. Has the percentage—Would you state the question again?

Q. Your percentage of sales to this class of customers through the years since 1951, has it increased, decreased, or remained the same?

A. In other words, the percentage of our total sales which goes to this class of customers?

Q. Yes.

A. I don't know that I could answer that question.

Q. This morning I believe you referred to sales to at least some of these categories as substantial, in an indefinite term.

A. Yes.

Q. Would you regard your sales to spice grinders and repackagers as a substantial part?

A. Yes, they are substantial sales.

Q. And could you give us within some idea of the percentage of your sales to this class of customers?

A. To do so would be largely a guess; I don't think I would care to guess.

Q. Well, what we are trying to determine is what you mean by substantial?

A. Well, they are important to us, some of our 291 largest customers are in that category.

Q. Well, I am still trying to determine what you mean by substantial; when you use relative terms on your

direct examination, it is not quite clear to us just what it means.

A. Well, if I could tell you, sitting here, precisely what we sold, I would be glad to do so.

Q. I am sure that you can't, but don't you have some idea of percentage when you say it is substantial or insubstantial?

A. There would be a great element of guess because I would have to isolate in my own mind what you mean by spice grinders and repackers and so forth, and it would be a guess.

Q. Well, when you use the phrase "substantial," when you used it this morning, it was a guess, then?

A. I don't think the word "substantial" is a guess; you are asking for percentages.

I am trying to determine what you mean by—

A. That would be a guess.

Q. That would be a guess?

A. In my opinion—

Mr. Walker: What would be a guess?

The Witness: Giving a percentage figure, a figure in percentages. In my opinion the word "substantial" is not a guess.

Q. (By Mr. Hays) What percentage does it encompass?

A. I don't know; I don't think I would care to state.

292 By Mr. Hays:

Q. Of all of your categories of customers, considering them all, in which category are the sales the most substantial?

A. Well, that is another difficult question since we have some customers that are manufacturers, some that are distributors, some that are repackers, and some that are jobbers. These are all important categories to us. I mean these are not customers where a minor and insignificant part goes to one category; these are all important parts of our business.

Q. So when you use the word "substantial," you mean important primarily, and are not referring to percentage elements, is that correct?

A. I would say any important part of our business would be a substantial part of it, yes.

Q. Can you think of any one customer that is not important?

A. We have cut several of them off because they were poor credit risks; I would say they were unimportant to us.

Q. Can you think of any ones that are good credit risks, any single customer that is a good credit risk that is not important?

A. We have in some cases decided we would rather sell some of our smaller customers through distributors or through someone who was repacking our products rather than sell them directly. Any customer is important and any order is important if it is—if it fits within our sales program.

293 Q. Now, with reference to the numbers of customers, if I understood your testimony correctly, the numbers increased to a point somewhere between 1951 and the present time, and then decreased, is that correct, in numbers?

A. Yes.

Q. And you indicated that that decrease, I believe, was as a result of your own calculated change of policy, is that correct?

A. That is correct.

Q. Will you state, when did that policy—What was the former policy and when did it change?

A. Some time in about 1949, 1950, 1951, following the reorganization of the New York sales office, we extended the sphere of the activities of the gentleman in charge of the New York office to help reorganize the Chicago office and then brought him out to the West Coast as manager.

Q. Who was that gentleman?

A. Mr. Farrell. We then embarked on a nationwide scale on a very active program of ferreting out every account we could find, large or small, and continued on a national scale that which we had started in New York originally. Along in about 1954 or 1955 we started critically evaluating our costs and looking at every operation to see how it could be improved, and we quickly came to the de-
cision that there were some accounts we should not
294 sell directly but we should sell through our customers,
through our distributors; there were also some products we felt that we should not handle, and as a result, there were also some orders we figured were too small for us to handle, should be put through somebody else, and the cumulative effect of that I am sure has been a decline in customers. We may still sell those customers indirectly through some of our customers who sell our products or in turn package our products, but they are not on our books directly.

Q. But you didn't abandon those sales to your competitors, did you?

A. We have never abandoned any sales to a competitor willingly.

Q. Your decline in the numbers of customers is due to the fact that they are now sold through distributors of you, is that correct?

A. Or that formerly we sold them items that we no longer sell, that we no longer handle.

Q. Well, you still sell dried onions, garlic and capsicums?

A. Yes.

Q. Who are these distributors that you refer to?

A. You mean all of them?

Q. Yes, who are they?

A. Well, they are spice grinders, repackers, and pur-

veyors of our type and allied products to the food manufacturing industry.

295 Q. In other words, they are your customers in one of these categories that you have referred to before?

A. Yes.

Q. Now, will you describe the mechanics that you had to go through in order to get these, I will call them small accounts, to buy through your distributors?

A. Well, in some cases these smaller accounts were already buying through our distributors and we would then encourage more of their business to go through them or we would work with the distributor and with the customer and place the orders through them, or in the cases of some packs and some size orders which we discontinued, we would then urge this customer to get his requirements from this distributor who in turn presumably was filling orders with our products, directly, or having been repacked.

Q. After you made your evaluation of your accounts in 1954-1955, what were the main considerations that resulted in a decision to stop selling these accounts directly?

A. Well, when you say after, these decisions are just not a coldblooded, cut and dried decision that is made once and forgotten; it is part of a continual critical review of our operations, looking to cutting costs and increasing production. We looked critically at the type of customers we sold, the size of orders, the number of packages, and the decisions were based on scrutinizing in those areas

296 which led us to get away from the small orders, to get away from certain items, and to get away from a certain type of customer.

Q. When you say get away from small orders, what was the size of those orders that you wanted to get away from, that were not profitable?

A. We at one time were accepting orders for less than 50 pounds, less than 25 pounds. We are large manufac-

turers; we believe we should not be in the small order business. We have a price schedule which is in part designed to take care of the added costs of small orders; the small orders, under 100 pounds in some cases, under 500 pounds in other cases, we do not want and our price schedules reflect that.

Q. You don't want them directly?

A. Directly.

Q. But you do want that business through distributors?

A. We want every bit of it we can possibly get through our customers.

Q. Since you initiated this new policy, have your number of salesmen increased or decreased or remained the same?

A. We have increased—

Mr. Owen: What was that? I didn't hear it.

(Record read.)

The Witness: Well, we went through a period of decrease in the number of salesmen, and then we are now on the increase. I believe we now have more than we did at the
297 time we started this very critical policy. Coupled with this has been a complete study and reorganization of sales areas and frequency of call on the customers.

Q. Would it be true to state that the impetus of your sales contacts has been directed away from these relatively unprofitable accounts and toward more profitable accounts and new accounts, prospective customers?

A. We are shifting our emphasis towards the profitable customers, yes.

Q. Does that mean more calls on customers you already have, your larger customers?

A. It means more attention to the larger customers and less attention to the smaller customers.

298 By Mr. Hays:

Q. With reference to your testimony this morning concerning the numbers of Consolidated food suppliers

that were contacted by the Gentry Division, do you recall that testimony? I believe you stated there were 20 or 25?

A. I believe I did, yes.

Q. That figure 20 to 25, is that all that were contacted, or is that all that you know about being contacted?

A. I don't know how many were contacted, other than what the reference we have been able to pick up during the course of this investigation. As far as I know, 20 to 25 were all that were contacted.

Q. You have had no personal knowledge as to the contacts made, did you?

A. I had no—no, I had no personal knowledge.

Q. During the period 1951, or since the acquisition, to the present, will you describe the personal knowledge that you had as to the extent of authority of the salesmen of the Gentry Division of Consolidated Foods?

A. Would you read that question, please?

(Record read.)

A. (continuing) The personal knowledge that I have had of the extent of the authority of the Gentry salesmen, that authority was limited to the sales and servicing of Gentry products, our products to our customers.

299 Q. I didn't hear you.

A. That authority was limited to the sales and servicing of Gentry products to our customers.

• • •

Q. What knowledge do you have concerning the extent of the authority?

• • •

A. They had the authority to sell our products to our customers.

Q. Were there any limitations placed upon that authority that you know of?

A. Do you mean did we tell them not to call on certain customers?

Q. I mean, were there any limitations on that general authority that you have described, any limitations?

A. Well, we had them out in the field trying to sell our products. We put no limitations on them selling our 300 products in the ordinary way of selling.

Q. During the course of Mr. Walker's cross examination, one phase of it sought to bring out changes in your method of operation from 1946 to the present, rather than from 1951 to the present.

Now, will you please tell me the circumstances under which a new plant was built in 1946?

A. In 1946 the company acquired the dehydration equipment that had been in the Seigel plant in Salinas and moved it to Oxnard, bought a site and constructed a plant and built a dehydration plant for Capsicums.

Q. Did you previously engage—

A. May I finish?

Q. —in that type of operation?

A. May I finish that question, or not?

Q. Excuse me, You may finish, but I will come back to the other; go ahead.

A. In 1950—I believe it was 1950—we moved the grinding, blending and processing portions of our operation from Los Angeles to the Oxnard plant.

Q. Now,—

A. And the reason I wanted to complete, because it was collectively, you might say constitutes the new plant that was built in Oxnard.

Q. In 1946, prior to your acquisition of this plant 301 and plant site, where did you process your Capsicums?

A. We would buy some of them already dehydrated. We would have some of them dried for us under custom, and a contact with a custom drier, and at times past, the company leased dehydration space, or leased dehydrators.

Q. You had none of your own, prior to 1946?

A. Well, we had none that was used for dehydration of Capsicums. The Gilroy plant could have been used for the

dehydration of Capsicums. We did have the blending, grinding, and finishing operations in the plant in Los Angeles prior to 1946.

Q. Now, why didn't you use the Gilroy operation for this Capsicum operation, if it was adaptable to it?

A. Oh, it is a question of distance of the raw material supply, the question of the plant—the plant was usually busy on onion and garlic at that time. We did use it at times. We did use it.

Mr. Hays: That is all I have, your Honor, on redirect.

Mr. Walker: Just one question, your Honor.

Recross Examination

By Mr. Walker:

Q. Dr. Prater, do you know of any of Gentry's customers that shift back and forth from the use of raw onions to the use of dehydrated onions, or vice-versa, based upon the price that is charged for either the raw or the dehydrated, as the case may be?

302 A. I know we have some customers who are in that category.

Q. I am sorry; I didn't hear you.

A. I know we have some customers that are in that category.

Mr. Walker: No further questions, your Honor.

Further Redirect Examination

By Mr. Hays:

Q. I have one or two questions based on the last question. Who are those customers?

A. I am just trying to remember. I believe one of them is the Junk King Company in Duluth, Minnesota. There is another outfit in, I believe, Peekskill, New York, that makes a concentrate or a juice. The name—that is part of Fleisch-

man Company or not—the name escapes me for a moment, but I know I have seen reports in the file of—I think possibly Mother's Foods.

There are others.

Q. How do you know they shift back and forth on account of price?

A. Well, at least that's what they tell our salesmen when they don't purchase from us.

Q. How much price differential is there before they switch?

A. Well, that is a very complicated question to answer. When onions are selling at a price where they are dumping them, or paying to dump them on the Chicago market, they are virtually free, and then the user who is equipped 303 to use either one will get essentially free onions. The actual price would be hard to determine.

Q. And that is when these customers shift, when there is free onions, or just being held for the asking?

A. No, not necessarily.

Q. Well, when do they shift?

A. They shift when it is, in their opinion, to their academic benefit to buy the raw material. It depends in the area they are in, what they pay for labor, their efficiency in operation, and the availability of raw onions.

Q. To what extent is this shifting problem among all of your customers?

A. I would say it is not to a major extent.

Q. Well, how many do you know of, let's put it that way?

A. We have heard; we get reports, of several of them. I can't recall at the moment any more than those I have mentioned.

* * *

304 JOSEPH D. FARRELL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. State your full name for the record, please, and spell it for the reporter.

A. Joseph D. Farrell, F-a-r-r-e-l-l.

Q. What is your home address, sir?

A. 1585 Knollwood Terrace, Pasadena.

Q. Where are you employed, sir?

A. I am employed by Gentry Division of Consolidated Foods in Los Angeles.

Q. How long have you been employed by them?

A. By the present company and its predecessors about, well, since December 1st, 1949.

Q. That is when you first came to Gentry, Inc.?

A. That's right.

Q. What was your position then?

A. I was hired in New York as the Eastern sales manager.

Q. You had salesmen under you?

305 A. Yes, I did.

Q. How long did you hold that position?

A. I was there until approximately September of 1954.

Q. And you changed position in 1954?

A. Yes, sir, I did. I was transferred to the Los Angeles office.

Q. As what?

A. As the national sales manager.

Q. You were in charge of all the sales of Gentry Products, then, is that correct?

A. Yes, I was, on a national basis.

Q. How long did you hold that position?

A. In November, I believe it was in 1955, I was elevated to vice-president in charge of sales.

Q. You have held that position ever since then?

A. Yes, sir.

Q. You were a successful salesman then, is that correct?

A. Thank you, sir.

Q. Is that correct?

A. I am glad that you say so. I appreciate—

Q. At least the company thought I were successful, isn't that right?

A. I believe the company believes that I am successful, yes, sir.

Q. Mr. Farrell, I am going to show you a schedule, 306 schedule "A" of the subpoena duces tecum which has been made a part of the record, I believe, as Commission Exhibit 98, and direct your attention to specification 3. Under that specification are listed a number of companies. I wish you would look at the list of companies and tell me which of those companies you had anything to do with selling of the Gentry products.

A. Sir, do you mean directly?

Q. Yes, sir.

A. Do you mean direct contact?

Q. Yes, sir.

A. Do you also mean from 1951 until right now?

Q. Yes, sir.

A. Would you like me to give you these separately?

Q. One by one, if you will.

A. Well, Wyler & Company. I have made direct contact with the company. Is that the type of answer that you want?

Q. Yes, sir.

A. Custom Foods. I have made direct contact with the company. Wass Food Products. I have never been in their place of business.

Armour & Company. I have been there and visited with them.

Michigan Mushroom Company. I have never been there.

Indiana Mushroom Company. I have never been there.

Gerber Baby Foods. I have never been there.

307 You have Fremont, Michigan. I have never been there.

Lake Odessa Canning Company. I have never been there.

Oscar Mayer & Company. I have been there.

Milwaukee Spice Mills. I have been there.

Jewett & Sherman. I—I have been to the Carolinas. I have not been in Milwaukee.

Lipton Tea Company. I have been there.

George A. Hormel & Company. I have not been there.

Bedford Products. I have been there.

Les Pommiers Cannery. I have not been there.

Bluepoint Company. I have been there.

J. J. Gielow & Sons. I have been there.

Recipe Foods, in Baltimore; I have been there.

J. L. Read Foods, Streator; I have not been there.

Grocery Stores Products; I have been there.

P. J. Ritter, Bridgeton. I have been there.

Woolson—I believe this is a typographical error; you have "Wilson Spice." It should be Woolson, W-o-o-l-s-o-n Spice, Toledo. I say that because there is a Wilson Company.

Mr. Walker: I missed your answer as to the Les Pommiers.

The Witness: I have been there.

Mr. Walker: And the J. L. Read Company?

The Witness: I have not been there.

Mr. Walker: And the Recipe Foods?

308 The Witness: I have been there.

By Mr. Hays:

Q. Now, with reference to the ones that you have contacted, will you state the circumstances under which you

contacted Wyler & Company as to the point of view of time and what did you do there?

A. By time, sir, what do you mean?

Q. When was—

A. When was my first contact?

Q. When was your first contact, and describe any other contact after that?

A. I understand. Wyler, I visited with them when I was more or less on loan to Chicago in 1952, and since then I have visited with Wyler a number of times.

Q. Now, when you first contacted them, what was the purpose of that contact?

A. Good will relationship.

Q. Were they buying from Gentry at the time of your first contact?

A. Yes, sir, they were. To my knowledge, they have always bought from Gentry.

Q. Were they buying all of their requirements from Gentry at that time?

A. I really don't know; I'm sorry.

Q. Was one of your purposes in contacting them to 309 seek to get them to buy more from Gentry, Incorporated?

A. It's always my desire to get customers to buy more from Gentry, yes, sir.

Q. As a result of that contact, did they buy more?

A. I really could not say truthfully. I couldn't say.

Q. In other words, you don't know whether it was as a result of that contact, that specific contact, but ultimately they bought more products from Gentry after you first started contacting them; isn't that true?

A. That may be true, sir. I don't know.

Q. Did you ever have any contact with the other divisions of Consolidated Foods?

A. Yes, I did.

Q. For what purpose?

A. For the purpose of getting to know Consolidated Foods, its employees, and for the purpose of selling them, too.

Q. Selling what? I didn't understand your answer.

A. Consolidated Foods.

Q. Selling to Consolidated?

A. Yes.

Q. Foods?

A. Yes, sir.

Q. What, sir?

A. Dehydrated onions and garlic.

Q. What divisions of Consolidated Foods purchased those products?

A. Monarch, Richelieu. These are distributing companies that compete with some of the other companies that you have talked; discussed previously.

Q. Are those the distributing outlets that you turned your small accounts over to in 1955?

A. No.

Q. Did you ever attempt to determine whether or not any of your customers or potential customers were selling products to Consolidated Foods or its divisions?

A. Yes, sir, I did.

Q. Or subsidiaries? When did you do that?

A. As I recall, for the first time when I went to Chicago in 1952.

Q. What did you do at that time?

A. What do you mean, what did I do?

Q. Who did you contact at that time?

A. Various personnel in Consolidated Foods.

Q. Who?

A. Specifically, who?

Q. Yes.

A. Well, there were several gentlemen. I can recall Mr.

Sarther. I can recall Mr. Bischman. I can recall Mr. Kennedy.

Q. And Mr. Kennedy is president of Consolidated Foods?

A. It is the same Mr. Kennedy.

311 Q. And Mr. Sarther was head of Sprague-Warner Stores?

A. Yes, sir.

Q. And Mr. Bischman—

A. Was the head of Monarch, I believe, at that time, possibly.

Q. Did you ask their help, ask them for any help at all in selling Gentry Products?

A. I didn't ask them for any help in selling Gentry Products. I did ask their help in opening the door for me.

312-314 Q. What do you mean by opening the door for you?

A. I asked their help to get me a hearing for my products to be presented to the buyer.

Q. A hearing insofar as what particular buyers were concerned, buyers of your products that sold to these people ese divisions?

A. 3.

Q. What specific buyers did you ask them to help you with?

A. Oh, I believe there was Armour as one; there was Custom Foods, as another. There are a few others, sir.

Q. Was Wyler & Co. one of those?

A. No, never.

Q. Were any of those on this list—

A. When I say "never," I should really clarify that. I don't recall ever asking for help with Wyler at all. I don't recall that.

Q. Well, how did you know that these potential customers also bought or sold goods to Consolidated Foods?

A. How did I find out?

Q. Yes.

A. Is that your question?

Q. I asked who did you ask?

A. The buyers of Consolidated Foods.

Q. Did you ask them about specific potential customers and customers, or did you ask them generally for a
315 list; did you show them a list of your potential customers and ask which ones sold to Consolidated Foods?

A. No.

• • •

Q. Did you go to the people at Consolidated Foods and tell them who your potential customers were, by name, and ask them if they, these potential customers, sold to Consolidated Foods Division?

A. In a few cases, yes.

Q. Did you ever ask them generally as to all of your customers or concerns you regarded as potential customers, whether or not they sold to Consolidated Foods?

A. No.

Q. Is it true, then, that you just brought to their attention selected customers or potential customers?

316 A. Just a few selected potential customers.

Q. Did you have the authority to do what you did, as far as you know?

A. Yes.

• • •

Q. You referred to what the people at Consolidated did for you as getting your foot in the door, is that correct, opening the door for you?

A. Yes.

Q. Well, —

317 A. I didn't say that they did that, sir. I said that is what I was looking for.

Q. That is what you hoped you would do for you?

A. That's right.

Q. Was it the general practice of the Gentry Sales

Division to enlist the aid of Consolidated Foods and its divisions in opening a door to potential customers?

• • •

A. (continuing) Yes.

Q. You contacted Custom Foods?

A. Yes.

Q. When? When was the first time?

A. I believe it may have been in 1952.

Q. For what purpose?

A. For the purpose of trying to sell the Custom Foods our products.

Q. Did they buy before you contacted them, from you?

A. I don't know that they did.

Q. Did they sell to Consolidated Foods?

A. I believe they did.

Q. Did you not contact Wass Food Products?

A. I did not.

318 Q. And you did contact Armour Company?

A. I did.

Q. The first time when.

A. That may have been the same period of time, 1952.

Q. You did not contact the Indiana Mushroom Company?

A. No, I did not, sir.

Q. You did not contact Gerber?

A. I did not contact Gerber at the address you have there.

Q. You contacted them elsewhere?

A. I did, yes.

Q. Where, sir?

A. In Rochester, New York.

Q. When, sir?

A. In 1949, '50, '51.

Q. When did you make your first sale to Gerber?

A. Actually, the sale was never. Your question was: When did I make the first sale?

Mr. Walker: Does that question mean when did Mr. Farrell make the first sale, or when did the Gentry Division make the first sale?

Mr. Hays: Mr. Farrell.

The Witness: I don't really recall, offhand. I am sorry. I think it was somewhere in '51 or '52.

By Mr. Hays:

Q. 1951 or 1952. At the time of the first sale, did 319 they purchase, or, rather, did they sell products to Consolidated Foods?

A. I believe they did, yes.

Q. You did not contact Lake Odessa Canning Company?

A. I did not.

Q. You did contact the Oscar Mayer Company?

A. Yes, I did.

Q. When for the first time?

A. For the first time in about 1957 or '8.

Q. 1957 or '58, when you first contacted them, were they selling to Consolidated Foods?

A. I don't know, sir.

• • •

Q. You did contact Milwaukee Spice Mills?

A. Yes, I did.

Q. When?

A. I would hazard a guess there. I would say 1955 or so, for the first time.

Q. Prior to that time, were they purchasing from Gentry?

A. Prior to 1955?

Q. Yes.

A. I believe, yes.

Mr. Walker: Excuse me; may I interrupt? And I 320 may be wrong, and I don't wish to speak out of turn, but I am wondering if the word "contact" has the same meaning to Mr. Hays as it does to the witness, Mr. Farrell?

By Mr. Hays:

Q. What does that mean to you, Mr. Farrell?

A. Well, I interpret the word "contact" as visiting with the customer.

Mr. Hays: A personal contact. Is that all right with you, Mr. Walker?

Mr. Walker: I just wanted to know, Mr. Hays. I have my answer; thank you.

By Mr. Hays:

Q. You have contacted Lipton Tea Company?

A. Yes.

Q. When for the first time?

A. The beginning of 1950.

Q. For what purpose?

A. For the purpose of selling our products to the company.

Q. At that time, were they selling products to Consolidated Foods?

A. I really don't know. I would say yes, but I really don't know for sure.

Q. When did you first contact Bedford Products?

A. I would say in 1951 or perhaps 1952, some time in that period.

321 Q. At that time, was Bedford selling items to Consolidated Foods?

A. As my hazy memory recalls, I believe they were.

Q. You did not contact the Blue Point Company?

A. I did contact the Blue Point Company.

Q. When, sir?

A. Some time in 1950 or '51 or '52, right in that period of time. I don't recall. I don't recall exactly.

Q. At that time, were they selling goods to Consolidated Foods?

A. That I don't know, sir.

Q. Did you contact J. J. Gielow and Sons?

A. Yes. I made contact with the J. J. Gielow and Sons.

Q. When, sir?

A. Rather recently. I would say in 1956 or '57.

Q. At that time, were they selling to Consolidated Foods?

A. I don't know.

Q. Did you contact Recipe Foods?

A. In Baltimore?

Q. Yes, sir.

322 A. Yes, I did.

Q. When, sir?

A. In 1950, '51, '52, '53.

Q. All during that period?

A. I believe so.

Q. Did you sell them any merchandise?

Mr. Walker: Again, does the "you" mean Mr. Farrell?

Mr. Hays: Yes.

By Mr. Hays:

Q. Did you sell them?

A. I believe so.

Q. During that time, were they selling to Consolidated Foods?

A. I believe they were, yes.

Q. Did you contact the Grocery Store Products?

A. Yes, I did.

Q. When for the first time?

A. I was there once, and I am trying to recall the year. I think it is somewhere in 1950 to 1952.

Q. At that time, were they selling products to Consolidated Foods?

A. I think they were, yes.

323 Q. Did you contact the P. J. Ritter Company?

A. Yes.

Q. Where?

A. In Bridgeton, New Jersey.

Q. When, for the first time?

A. In 1950, '51, '52.

Q. For what purpose?

A. For the purpose of selling them our products to the company.

Q. At that time were they selling to Consolidated Foods?

A. I really don't know, since they are competitive to Consolidated Foods. I really don't know.

Q. Did you make any sales to P. J. Ritter & Company prior to the acquisition?

A. Yes, I believe we sold them, yes.

Q. After the acquisition did your sales increase?

A. I don't remember. I recall, sir, because there was a period of time when we lost all of their business because we couldn't quite meet their technological requirements and then later we got their business back. When that was, I don't know, but there was a period of time when we lost their business completely.

Q. You did get it back?

A. Yes. We met their technological requirements and we did get it back, fortunately.

324 Q. At that time, that is, when you got it back, were they selling to Consolidated Foods?

A. As I said before, I don't really recall P. J. Ritter & Company actually selling their products to Consolidated Foods.

Q. You contacted the Woolson Spice Company?

A. In Toledo.

Q. In Toledo?

A. Yes.

Q. When, for the first time, did you contact them?

A. I would say some time in 1954, '55, in there.

Q. At that time were they selling products to Consolidated Foods?

A. I don't know. I truly don't know.

Q. In each of these instances that you have just testified to, where you made a personal contact, you made those contacts for the purpose of selling the dried food seasoning made by the Gentry Division, is that correct?

A. That's right.

Q. Where the customer was not an old customer, you made it to get him to take on the line, is that correct?

A. What do you mean by "take on the line"?

Q. That is, to buy from you, to begin buying from you?

A. That's right, yes.

Q. Where he was a previous customer, you made the contact to sell him more, is that right?

325 A. Or additional items, yes, sir.

Q. During your time as a salesman there had been times that you contacted customers that you were unsuccessful in selling, is that correct?

A. Many times, yes.

Q. In those instances where you were unsuccessful in selling particular customers, did you make any inquiries of officials of Consolidated Foods as to whether they sold goods to Consolidated Foods?

A. Would you restate the question, please? I don't quite follow you.

Mr. Hays: Would you read the question, please?

Hearing Examiner Kolb: Yes, read the question.

(Question read.)

The Witness: On a few occasions, not as a normal practice.

By Mr. Hays:

Q. What were those occasions?

A. Well, as I mentioned before, I remember Armour & Company, and I remember Custom Foods. As I stated before, there are a few others.

Q. Now, you certainly wouldn't contact Consolidated Foods when your potential customer was not engaged in selling the type of product that Consolidated Foods bought, would you?

• • •

326 A. I would have no way of knowing that Consolidated Foods was selling this company or this company was selling Consolidated Foods.

By Mr. Hays:

Q. Well, then, why was it in some instances you asked Consolidated Foods if the company, particular company, sold anything to them, and in some instances you didn't ask?

A. Because, Mr. Hays, there were certain companies
327 that didn't believe in giving us an audience, and there are other companies that did. They showed us the kindness of an audience, and we endeavored to sell them, and there were other cases where we couldn't get in the front door, and that would be the difference between both types of classifications.

Q. In other words, you asked for help in instances where you had the least chance of selling?

A. No, I wouldn't put it that way at all, because a good salesman always has a chance of selling. There is no such word as "No." There are cases where you cannot sell unless you can talk with somebody, and it is in those cases that we sought the opportunity to sit down and at least present our merchandise to somebody, and be listened to as you are being listened to and I am being listened to.

Q. Now, since you have become a sales manager and executive vice-president, the salesmen of Gentry are under you, is that correct, under your supervision?

A. Would you start from the beginning there? I am sorry.

Q. Since you have become vice-president —

A. Yes.

Q. — and since you became sales manager,— you were sales manager first?

A. Yes.

Q. And then vice-president, the salesmen of Gentry have been under your supervision, is that right?

328 A. That's right, sir.

Q. Since that time have you continued to contact Consolidated Foods for the purpose of aiding you to get an audience with potential customers?

A. If I may restate your question in my terminology,

did I since 1954 contact Consolidated Foods for the purpose of looking for an audience through their help? No.

Mr. Hays: Mr. Reporter, read my question back, please.

(Record read.)

The Witness: Do you mean since 1954 or do you mean right now?

By Mr. Hays:

Q. Whenever you became sales manager up to now?

A. When I became sales manager I contacted Consolidated Foods on occasion as I have explained before.

Q. When?

A. What years?

Q. Yes.

A. In 1954, possibly 1955.

Q. With reference to what customers or potential customers did you contact Consolidated Foods?

A. I don't recall at the moment, sir.

• • •

330 *Cross Examination*

By Mr. Walker:

Q. Mr. Farrell, in how many instances, to your knowledge, was there either a contact made or a suggestion that you know of that a contact was made by either Gentry or Consolidated representatives with customers of Gentry that in any way involved the Gentry-Consolidated relationship?

• • •

[Objection by Mr. Hays that question called for a conclusion was overruled]

• • •

331 A. I would say about 20 or 25 cases, Mr. Walker, in that neighborhood.

By Mr. Walker:

Q. How many customers, Mr. Farrell, did Gentry have, on the average, in each of the years 1952 to 1955?

A. About 5,000 customers.

Q. Based on those answers, Mr. Farrell, would you say that there was any general practice in Gentry that involved the contacting of Gentry customers and in the course of such contacts in any way mentioning the Gentry-Consolidated relationship?

• • •

[Objection by Mr. Hays that the question called for a conclusion was overruled]

• • •

332 A. Your question, as stated, is asking me whether, because of these 25 or so contacts that we made out of 5,000, whether this is a general practice, is that right, Mr. Walker?

By Mr. Walker:

Q. That is correct.

A. Well, it couldn't be a general practice on that basis, no, it wasn't.

Q. Was there any general practice in Gentry during the years in question which involved the relationship between Gentry, Consolidated and Gentry customers who were also Consolidated suppliers?

A. No.

• • •

333 Q. The answer was—

A. No.

Q. Mr. Farrell, do you have any personal knowledge of any instance where any representative of Gentry or Consolidated to a customer of Gentry, orally or in writing, that Consolidated would buy less from the customer unless the customer bought from Gentry?

A. I have no such knowledge.

Q. Mr. Farrell, what would be your opinion of the effectiveness of any such threat if it were made by either Gentry or Consolidated representatives?

Mr. Hays: Objection, before the witness answers; it is the same type of objection I interposed with reference

to the same or similar question asked of Mr. Prater. It is opinion; it is a conclusion; it is usurping the function of the Commission and the Hearing Examiner. It has no probative force.

Hearing Examiner Kolb: The objection will be sustained.

* * *

334 Mr. Walker: May I make an offer of proof in this area, your Honor?

Hearing Examiner Kolb: You may offer proof.

Mr. Walker: If the witness were permitted to answer this question, he would, I believe, testify that in his opinion any such threats, if made by either Gentry or Consolidated representatives, would be ineffective.

By Mr. Walker:

Q. Mr. Farrell, in the course of your contacts with the customers or potential customers of Gentry, did you ever state or mention to any such customer or potential customer that Consolidated was a purchaser of that customer's product?

A. I did not.

Q. Why not, Mr. Farrell?

A. I believe that would be very poor selling technique; not at all appreciated by me; not at all appreciated by the customer.

335 Q. Do you have any personal knowledge, Mr. Farrell, of any instance where Gentry made sales to a customer as a result of contacts made with that customer by any Consolidated personnel?

* * *

A. No, I do not have any such knowledge.

Q. Do you have any knowledge, Mr. Farrell, of any instances where sales to a customer followed in time sequence a contact made with that customer by any Consolidated personnel?

A. It could have been.

Q. Do you know of any such instances?

A. Are you asking me, Mr. Walker, whether after a contact had been made by a Gentry representative of the customer, we may have gotten an order thereafter where a contact may have been made simultaneously by Consolidated Foods?

Q. No, Mr. Farrell, I am just asking the simple question of whether you know of any instances where after a contact was made with a customer by a Consolidated employee, a contact of which you have knowledge, whether any, in any such instance, sales in time sequence followed that contact?

* * *

336 By Mr. Walker:

Q. Let me put it this way: Do you still not understand what I am getting at, Mr. Farrell?

A. No, I don't feel I understand the question.

Q. Will you strike the question, please.

Do you know of any instances, Mr. Farrell, where any Consolidated personnel made any contact with Gentry customers or potential customers?

A. Yes, I do.

Q. Now, with that knowledge, in those instances, do you know of any of those instances where thereafter Gentry made sales to that customer?

A. Yes, we did.

Q. Now, in those instances, Mr. Farrell, do you have any knowledge as to the reasons why those sales were made?

A. Yes, I have no doubt of the reasons, and it would be because of good selling practices, good selling techniques, good service, good quality products, many good reasons for selling customers our merchandise, Mr. Walker, many good reasons, technology problems solved, good deliveries, competitive merchandise, and good salesmanship in general. I would say those are the main reasons why you sell anybody anything at any time.

337 Q. Mr. Farrell, did any Gentry salesman have au-

thority to say to any Gentry customer or potential customer that Consolidated would reduce its purchasing from that customer if the customer did not purchase Gentry's products?

A. I do not know of any such knowledge at any time.

Q. Any such authority?

A. Authority, excuse me.

Q. Mr. Farrell, in your opinion has Gentry lost any business as a result of its relationship with Consolidated?

Mr. Hays: Objection.

Hearing Examiner Kolb: Overruled.

A. We have lost a considerable amount of business, Mr. Walker.

By Mr. Walker:

Q. Now, Mr. Farrell, I would like to refer you to the 22 companies that Mr. Hays asked you about on your direct examination, and so that you will have the names available to you I will hand you this Exhibit No. 98 which Mr. Hays handed to you before, the companies listed under item No. 3.

Now, you described, I believe, Mr. Farrell, your contacts with a number of those customers, is that correct?

A. That is right.

Q. In any of those, in the case of any of those companies included in that list, Mr. Farrell,—I am sorry, strike the question, please, and I will start over again.

338 Were any of the companies included in that list converted from raw products to dehydrated products by Gentry sales personnel?

A. Well, here is a customer right here that was, Wass Food Products.

Q. Are there any others, Mr. Farrell?

A. Yes, here is one here, Bedford Products, Dunkirk, that's about all that I see that I know of.

Q. Now, are there included in that list of companies,

Mr. Farrell, any companies who to your knowledge shift back and forth from the use of the raw product to the dehydrated product?

A. Yes, there is. J. J. Gielow & Sons, and there is P. J. Ritter & Company.

Q. Now, based on your contacts with those customers, Mr. Farrell, what considerations caused those customers to shift back and forth from the raw to the dehydrated product?

A. The prices of the raw commodity being cheaper.

Mr. Walker: That's all.

Redirect Examination

By Mr. Hays:

Q. I will have to confess I didn't follow one answer you gave. It had to do with the reasons for purchasing from Gentry, I believe. When you gave your answer as to the reasons, you were giving the reasons that you believe
339 people purchased from Gentry, is that correct?

A. I always give my opinion, sir, yes.

Q. Your reasons?

A. Yes.

Q. Your answer was not attempting to show that you knew what the reasons of the customers were in purchasing from Gentry, was it?

A. No, it was meant to give you what I believe was the reason why the customers purchased from us, the real reason the customer bought from us, my opinion.

Q. That's right, but the customer knows the reason, not you, is that correct?

A. I wouldn't argue that with you, sir.

• • •

346 By Mr. Hays:

Q. Now, you mentioned that J. J. Gielow, P. J. Ritter Company shift between raw, the raw products and the dehydrated products.

A. Yes, sir

347 Q. And you stated, I believe, that they would go from the dry product from the dehydrated product if the raw product price is lower?

A. Yes, sir.

Q. How much lower?

A. They all have their own basis for determining that. With these companies, or with this company that Dr. Prater brought up before, up there in Duluth, Minnesota, the Chung-King Canning Company, they have a set pattern for the purchase of raw onion; now, their purchase is based upon when raw gets to about $2.25 per hundredweight, down to that, they will buy the raw, but when raw goes over that figure, then they will buy the dehydrated onion, and the mathematics of the dehydrated onion would of course fluctuate along with the raw, and whichever is lower or higher would be the one that of course would be viewed upon to get the business, the commodity, in that case.

Q. Suppose the prices were equal?

A. If all things were identically equal, then I would imagine it would be entirely a question of supply. If they could buy in maybe six months' supply at a price that would be to their advantage, why, they may take that into consideration. Actually I don't really know what they would do; I have never seen the time when it came down to being exactly equal. There is always some little fraction one way or another, sir.

348 Q. And how much — you say raw onions when they were $2.50 a hundredweight?

A. As I last recall, they are somewhere in the neighborhood of $2.25, $2.40, in there; it all depends on labor. With the raw onion — would you like me to clarify this?

Q. Is your answer complete?

A. Is my answer complete?

Q. Yes.

A. As to what?

Q. As to my question.

A. No, it wasn't complete.

Q. Well, complete it then.

A. When they buy raw onion, Mr. Hays, they must also figure in labor, they must also figure in waste of the product, they must also figure in several factors which are added to the cost of the raw onion, which are items that they don't figure in with dehydrated, so in all these cumulative costs are added to the cost of the raw material, then the costs are added to the costs of the raw materials, is what I meant to convey to you before.

Q. Now, insofar as J. J. Gielow and P. J. Ritter are concerned, how often since the acquisition have they gone to the raw product, shifted to the raw product?

A. I don't know how many times. In fact, it was just recently that Ritter went over to raw onion, I think it
349 was last year.

Q. What about J. J. Gielow?

A. I don't know, sir, but it is one of those things, yes and no, and yes and no, it has happened several times with Gielow, I admit this is a pickler, like all other picklers turns out a relish; a relish is the cheapest thing a pickler sells. Everything that goes in must be the cheapest, so therefore cost is a factor; whenever these people can save an eighth of a cent on raw, they will certainly consider raw, and there are times when raw onion in certain geographical areas may be a little bit lower than dehydrated, and we may expose ourselves more often to losing the picklers than we would any other type of account for that reason.

Q. Doesn't the fact that your sales are on a contract basis deter the shifting to raw onion?

A. No, sir.

Q. You don't have any binding contracts over a long period of time?

A. No, sir.

Q. I believe you testified that Gentry had an average of about 5,000 customers?

A. I would say that is about right, yes, sir.

Q. Are you able to state approximately how many of those customers sell products to Consolidated Foods Corporation?

A. Are you asking me, sir, how many of those 5,000 350 customers are selling?

Q. Yes.

A. I have no way of knowing that.

Q. Do you know as of the time covered by this action, that is, from — Strike that, please.

From the time of the acquisition to the present time, I believe you stated you have about 5,000 customers a year, that is the average, the yearly average?

A. It has been that, yes, sir.

Q. And do you know what the yearly average is of those customers that purchase from Gentry and also sell to Consolidated Foods?

A. I am going to have to ask you to repeat the question.

Mr. Hays: Would you read the question?

(Record read.)

The Witness: I don't know.

* * *

353 Los Angeles, California
October 16, 1958

354 PROCEEDINGS

Mr. Hays: Mr. Bellisime, will you take the stand please?

LLOYD C. BELLISIME, a witness called on behalf of the Commission, having been previously duly sworn, resumed the stand and testified further as follows:

Further Direct Examination

By Mr. Hays:

Q. You were sworn Tuesday before you testified. Do you understand that you are still under oath?

A. Yes, sir.

Mr. Hays: I have no further questions on direct, your Honor.

Cross Examination

By Mr. Walker:

Q. Mr. Bellisime, you will recall that in the course of your direct examination you were interrogated by Mr. Hays about this area of "reciprocity"; do you recall that examination?

A. Yes, sir.

Q. It is that area in which my questions will be directed, Mr. Bellisime.

Mr. Bellisime, while you were with Gentry, do you recall any occasions when to your knowledge Gentry salesmen 355 had difficulty in obtaining a hearing from customers on the merits of Gentry's products?

A. I would say yes.

Q. And isn't it a fact, Mr. Bellisime, that this so-called reciprocity effort which you testified about on direct examination was really aimed at getting the Consolidated suppliers in the instances where it did occur to give Gentry a fair hearing?

A. Yes, sir.

Q. Mr. Bellisime, do you personally know of any instances where to your knowledge representatives of Consolidated, to a Consolidated supplier, that Consolidated would stop purchasing from the customer, from the supplier, I am sorry, if that supplier did not purchase from Gentry?

A. No, sir.

Q. Do you know of any instances, Mr. Bellisime, where any representative of Gentry stated to any Gentry customer, or potential customer, that if that customer did not purchase from Gentry that Consolidated would stop purchasing from the customer?

A. No, sir.

Q. During the time while you were with Gentry, Mr. Bellisime, in an executive position, did any Gentry sales personnel have any authority to say to a customer that Consolidated would stop purchasing from that cus-
356 tomer if that customer did not buy from Gentry?

A. No, sir.

Q. Now, Mr. Bellisime, I would like to go back to the period of time surrounding the acquisition of Gentry by Consolidated, and the discussions that took place at the time of the acquisition.

At that time, Mr. Bellisime, do you recall any discussion at all of the possible use of Consolidated's purchasing power to help obtain business for Gentry, at the time of the acquisition?

A. Well, I think somewhere along the line the statement was made that being acquired by Consolidated Foods would tend to broaden the base of Gentry. But at that time there were a number of various divisions of Consolidated Foods that Gentry hadn't been selling.

Q. Do you recall any discussion at all, Mr. Bellisime, at or about the time of the acquisition about this area of so-called reciprocity?

A. No.

Mr. Walker: Excuse me please, your Honor.

No further questions, your Honor.

• • •

357 *Redirect Examination*

By Mr. Hays:

Q. Mr. Bellisime, I hand you Commission's Exhibit for identification 121; ask you to examine it and state what it is?

A. Well, I would say it is a letter under my signature addressed to Mr. Martin Kraham, who at that time was the sales representative in Chicago, on the subject of George A. Hormel and Company, in Austin, Minnesota, asking him to investigate through Consolidated Foods—

Q. You wrote this letter; is that correct?

A. I would say so; yes, sir.

Q. In August of 1953, was the Gentry division of Consolidated Foods attempting to sell George A. Hormel and Company dehydrated onion and garlic?

A. I would say that Gentry had always attempted, or ever since Gentry probably was in operation, had attempted to sell Hormel onion and garlic and capsicums as well.

358 Q. Therefore, it was doing just that in August of 1953; is that correct?

A. Attempting to sell Hormel?

Q. Yes.

A. Yes, sir.

Q. In August of 1953, was Hormel selling anything to Consolidated Grocers, or Consolidated Foods, or any of its subsidiaries?

A. That, sir, I don't know.

Mr. Hays: We offer Commission's Exhibit for identification 121.

Hearing Examiner Kolb: Any objection?

Mr. Walker: No objection, your Honor.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 121.

• • •

Recross Examination

By Mr. Walker:

Q. Mr. Bellisime, I would like to have you look again at this letter which has been received in evidence as Commission's Exhibit 121.

Mr. Bellisime, do you know whether or not any rep-
359 resentative of Consolidated's, Consolidated Foods Corporation, ever talked to anyone on the George A. Hormel and Company after the date of this letter about Gentry?

A. I don't recall. I don't know whether it was done or not.

Q. Mr. Bellisime, in two places, three places in this letter, in the third paragraph, you have used the word "pressure," —

Mr. Hays: May I object to going into the contents of this document at this time?

• • •

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Walker:

Q. You used the word "pressure" on several occasions in this letter, Mr. Bellisime. Would you please state what you meant by the word "pressure" in this letter?

360 A. Well, I think that sales people are loose in their terminology. Broadly, the word "pressure" in sales contact would mean to do everything reasonably possible to get the business or get some business.

It is a type of analysis or descriptive phrase that is used as a type of selling, where a salesman can be called a high pressure salesman or low pressure salesman. It means to bring everything he possibly can to bear on an account towards doing business with him.

Q. Are you through, Mr. Bellisime?

A. Yes.

Q. When you use the word "pressure" here, did you have in mind at all, Mr. Bellisime, the kind of approach that you testified to earlier, that is that you wanted Consolidated Foods Corporation to assist in getting Gentry a hearing on its products with this customer?

A. I would say very definitely yes, because from my point of view, if any prospector, or any firm is pressured into buying merchandise, from something that they resent, it never becomes a satisfactory account.

* * *

362 San Francisco, California
October 20, 1958

363 PROCEEDINGS

* * *

VIRGIL M. JONES was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Will you give us your full name?

A. Virgil M. Jones.

Q. What is your home address?

A. My home address is 1001 North Mitchell, Turlock, California.

Q. Where are you employed, sir?

A. I am employed by Puccinelli Packing Company.

Q. In what capacity?

A. Office Manager.

Q. How long have you been employed in that capacity?

A. 3½ years.

Q. Are you here as a result of a subpoena?

A. Yes, I am.

364 Q. Do you have that subpoena, sir?

A. Yes, I do.

Q. Will you tell us a little bit about the type of business the Puccinelli Packing Company is engaged in?

A. It is engaged in the dehydrating of onions and garlic, various vegetables, and canned goods.

Q. For how long has it been so engaged?

A. Puccinelli Packing Company is in the onion and garlic field, and I believe it was during the War, sometime during the War that they began operations, but I am not able to state just exactly when. But it would be.

Q. You mean World War II?

A. World War II.

Q. Since January 1, 1950, where have the dehydration plants of Puccinelli Packing Company been located?

A. The dehydration plants have been located at Livingston and at Turlock. Livingston is the initial processing center.

Q. What type of product is processed there?

A. Livingston, onions and garlic.

Q. What about Turlock?

A. At Turlock the onion and garlic is worked into a finished product and also the other products that we process are processed at Turlock.

Q. During the period January 1, 1950, to the present, where has dried onion and garlic been sold by the
365 Puccinelli Packing Company?

A. It has been sold mainly within the United States.

Q. Is that generally throughout the United States or packers within the United States?

A. Generally throughout the United States.

* * *

366 Q. During the period indicated, to what kind of customers were those products sold?

367 A. They were sold to distributors and users, manufacturers.

Q. What type of manufacturers were they sold to?

A. Well, they were sold to mostly, I would say, meat packers, oh, those that make combinations of different meat dishes and spaghetti dishes, and things like that.

Q. And do these figures that you have just called off refer only to dehydrated onion and dehydrated garlic?

A. That is right, sir.

Q. How are these products used by your customers?

A. Well, they are used in the manufacture or as to manufacturers, they are used the same as fresh onions. They are reconstituted and put into a fresh stage. They are used for flavoring and seasoning.

Q. During the period January 1, 1950 to the present, has the Puccinelli Packing Company been engaged in any type of processing or business other than you have already stated?

A. That is right, sir.

Q. It has not?

A. It has not been.

* * *

368 *Cross Examination*

By Mr. Walker:

Q. Mr. Jones, will you please describe in general terms your sales and distribution system?

A. We distribute through brokers almost entirely. We have no direct sales force in the field whatsoever.

Q. And you have these brokers who sell your products located throughout the United States?

A. Yes.

Q. In selling dehydrated onion and garlic, Mr. Jones, do your brokers customarily call on the companies that are being sold by your competitors?

A. Yes.

Q. To your knowledge, do these brokers try to persuade

those customers to buy from you instead of your competitors?

A. We would hope so.

Q. Mr. Jones, has your company ever reduced the prices of dehydrated onion and garlic products below those of your competitors in an effort to make sales?

* * *

369 By Mr. Walker:

Q. Do you wish the question repeated, Mr. Jones?

A. It is kind of a hard question to answer, because you have no direct connection with the thing. I imagine there have been times when our prices have been lower than what our competition's prices have been, and at times higher, we have sold higher than they have.

Q. Each company is continually trying to take business from the others in this industry, aren't they, Mr. Jones?

A. Yes.

Q. Mr. Jones, does raw onion and garlic, in your opinion, compete with dehydrated onion and dehydrated garlic?

A. Maybe in certain seasons, not in certain fields. I mean in certain fields, it does, very definitely certain fields it does.

Q. And does your company in its sales effort try to
370 persuade any raw onion users to shift to dehydrated onion?

A. Certainly, yes.

Q. And the same thing would be true of garlic, wouldn't it, Mr. Jones?

A. That's right, sir.

Q. In your opinion, Mr. Jones, would a substantial price increase in dehydrated onion cause any present users of dehydrated onion to shift to the raw product?

A. I think there is always a shift as to price, fluctuations, price fluctuation in certain areas.

Q. Mr. Jones, doesn't the Puccinelli have a foreign plant?

A. Yes.

Q. Where is that plant located?

A. It is located in Italy.

Q. What is the name of the plant? Does it have a separate name?

A. The name carried in Italy is Puccinelli Packing Company, but it has no integral work with this company. In other words, he is a stockholder there, and he is a stockholder here. He is a stockholder there, but this company does not control that company in any way whatsoever.

Q. Where is that plant located?

A. Rovigo.

Q. Would you spell that?

A. R-o-v-i-g-o.

371 Q. What type of products are produced at that plant?

A. Well, they produce dehydrated tomatoes, and dehydrated apples. There have been minor quantities of dehydrated onions and garlic produced, but nothing of any proportion whatsoever.

Q. There are a number of places, aren't there, Mr. Jones, outside of the United States where dehydrated onion and dehydrated garlic are produced?

A. Yes.

Q. Do you know the countries where the dehydrated product is produced outside of the United States?

A. I think perhaps the main country is Egypt.

Q. Do you recall any others, Mr. Jones?

A. I am not sure of any others, sir.

Q. The foreign dehydrated onion and garlic is imported into the United States, is it not?

A. I think so. I think some of it is, yes, sir.

Q. And the foreign dehydrated product is sold in the

United States at a price cheaper than the domestic product, isn't it?

A. Yes, it is

Q. That is true even after the inclusion of the import duties or the tariffs, is it not, Mr. Jones?

A. To my knowledge, it is.

Mr. Walker: No more questions.

372 Mr. Hays: I have a few questions on redirect, Your Honor.

Redirect Examination

By Mr. Hays:

Q. With reference to your testimony concerning the raw onions and raw garlic, I believe that you stated that in certain fields that product was competitive with the dehydrated product; is that correct?

A. Yes.

Q. But you neglected to say in what particular fields it was competitive, and what particular fields it was not competitive.

Will you describe those fields that you refer to?

A. I think in your restaurants and things like that, where it is easily convertible from one to the other, it is interchangeable in the field of manufacturing, in the field of manufacturing—well, they aren't set up to handle it that way at present. It could be if there was to be a major price increase, they could go back to handling their own onions as they have in the past.

Q. They are not so set up to handle them now?

A. That's right.

Q. In your opinion, Mr. Jones, what percentage of the total national sales of dehydrated onion and dehydrated garlic are accounted for by sales of dehydrated onion

373 and dehydrated garlic which are prepared outside of the United States and shipped in?

A. I would say it is a very small percentage. I don't have figures, and someone would have to have figures to determine how much it is, how much is imported to determine the sales, but I don't have the figures to give you that.

Q. When you say it is very small, could you give us some percentage figure that it would not exceed?

A. I would hate to. I would say it probably doesn't exceed 5 per cent. I wouldn't want to be—it could be that. To my knowledge, it doesn't exceed 5 per cent.

* * *

LEON C. JONES was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Will you spell your full name for the record?

374 A. Leon C. Jones, J-o-n-e-s, L-e-o-n.

Q. What is your home address?

A. 1824 Everett Street, Caldwell, Idaho.

Q. Where are you employed, sir?

A. J. R. Simplot Company.

Q. J. R. Simplot, S-i-m-p-l-o-t, Company?

A. That is right.

Q. Where are they located?

A. Their home office is in Boise, Idaho, and their Food Processing Division is in Caldwell.

Q. You are here as a result of a Subpoena Duces Tecum served upon you?

A. That is correct.

Q. Will you hand that to me, sir?

A. Yes. (Indicating.)

Q. During the period January 1, 1950, to the present,

in what type of business has the J. R. Simplot Company been engaged?

A. We have been in dehydration of potatoes and onions and the freezing of potatoes primarily.

Q. Where are the plants of that company located?

A. They are at Caldwell, Idaho.

Q. At any time during the period January 1, 1950, to the present, was the company engaged in the dehydration and sale of garlic?

375 A. No.

Q. During that period where were your sales made of dehydrated onion?

A. Primarily to the Government, and some to the meat industry, the packing industry, and general distribution, wherever they are used.

Q. Throughout the United States?

A. That is right.

• • •

377 *Cross Examination*

By Mr. Walker:

Q. Mr. Jones, does J. R. Simplot Company have any plants at any places other than at Caldwell?

A. Not as the J. R. Simplot Company. We operate another plant that he owns through another corporation.

378 Q. What plant is that?

A. The Shelley Processing Co.

379 Q. Where is that located?

A. That is at Burley, Idaho.

Q. At Burley?

A. Yes.

Q. What work is done at that plant, Mr. Jones?

A. It is all dehydration of potatoes.

Q. Are there any other plants that are associated with the Simplot Company in any way, or owned by Mr. Simplot?

A. Not food plants.

Q. What are they plants other than food plants?

A. A fertilizer plant, making phosphate, at Pocatello, Idaho, and there is a lumber plant in Auburn, California.

Q. Are only potatoes and onions processed at your Caldwell Plant?

A. We haven't processed any onions since — I believe it's on that — 1955. But we do process potatoes.

Q. You do process only potatoes at the present time?

A. And corn.

Q. What kind of corn is produced there, Jones?

A. Both canned and frozen. We both can and freeze corn.

Q. In what form are dehydrated potatoes sold that you process at Caldwell?

A. Well, we have made two types of dehydrated potatoes for the last few years, I know, a shredded instant potato that was — and a diced dehydrated potato.

380 Q. Are those potatoes sold under the Simplot name?

A. No. The diced ones are. The shredded ones are sold under the Minute label of General Foods Corporation.

Q. They are distributed for you by General Foods, is that correct?

A. No. We just process them.

Q. And you sell to General Foods, is that correct?

A. That is right.

Q. And General Foods in turn distributes this instant potato product and sells it to retail stores for resale to the consuming public, is that right?

A. Yes.

Q. You mentioned freezing potatoes. Would you describe that business in a little more detail, please, Mr. Jones?

A. Well, that is our primary operation, and has been for several years, and the processing of the potatoes into frozen French fries, both institutional and retail styles.

And then we have the by-products out of those, which are also frozen for retail and institutional sales.

Q. How do you sell the frozen potatoes, Mr. Jones?

A. They are all sold through our own salesmen, as well as a brokerage organization, throughout the United States.

Q. You do have direct salesmen in the field that sell your frozen French fries, your frozen French-fried potatoes, is that right?

381 A. Well, they actually work with the brokers, other than some of the major accounts that we do handle direct.

Q. When did the J. R. Simplot Company first dehydrate onions, Mr. Jones?

A. 1940.

Q. And did your company continue in the dehydrated onion business through the period that is indicated on Exhibit 122, that is, up until 1957?

A. '56.

Q. '56?

A. We quit. We ran our last ones in the season of 1956.

Q. And continuously throughout that period from 1940 to 1956, the J. R. Simplot Company was processing and selling dehydrated onions?

A. I don't know whether I can answer that. I think there may have been a year or two in there when we didn't.

Q. But more or less continuously?

A. Yes.

Q. When you sold dehydrated onions, Mr. Jones, how did you sell them? That is, what was your distribution method?

A. Well, as I say, primarily to the government, and we also sold through our brokers and salesmen to other customers that we could find.

Q. You had direct salesmen who worked for the J. R. Simplot Company who sold your product?

382 A. Not through all of that period.

Q. During a portion of that period?

A. We were—our own sales force, we had that, but we didn't have direct salesmen in the field until about 1953.

Q. Did your salesmen who sold potato products also sell the onion products at the time that you were processing dehydrated onions?

A. Yes.

Q. Now, Mr. Jones, I note from this exhibit 122 that in the period commencing in 1951 and continuing through until 1956, with one or two exceptions, there is a fairly steady decrease in your sales of dehydrated onions.

Would you please explain, to the best of your ability, Mr. Jones, the factors that caused this decrease in sales?

A. All right. It is tied directly to our increase in the development of our frozen potato operation.

Q. Would you explain that, please, Mr. Jones?

A. Well, as both the financial and personnel requirements, we were required to increase our volume, which we did in an almost fantastic quantity during that period of time. Why, we just got further and further from anything other than frozen potatoes, which resulted, I might add that in 1956, with the removal of all of our dehydration equipment at that time for the replacement of it with potato equipment in the entire plant.

Q. Would you please describe, Mr. Jones, the cir-
383 cumstances surrounding the entry of the J. R Simplot Company into the dehydrated onion business in 1940?

A. Well, that was before I had came with Mr. Simplot in 1941. You want how he happened to get into it?

Q. Yes, if you will, please.

A. Well, the story is that he was selling dehydrated onions to Mr. Sokol, who—that is a little wrong, too.

Mr. Sokol was buying dehydrated onions from someone processing them here in California, who in turn wanted raw onions which they were purchasing from Mr. Simplot

in Idaho, and he came down to see what the operation was, and he said if they could buy raw onions in Idaho and ship them to California and dehydrate them in California, and have a business, we should have a better business if we could dehydrate them in Idaho where they are grown, and started to build a plant.

Q. To your knowledge, Mr. Jones, did the competition existing in the dehydrated onion field in this period from 1951 to 1956 play any part in the decision of the J. R. Simplot Company to go out of it, to go out of the onion dehydration?

A. I don't think so.

Q. Has the Simplot Company, to your knowledge, Mr. Jones, given any consideration to going back into the onion dehydration?

A. Yes, it has. We have talked about it every year.
384 I bought drying equipment about four years ago for installation to change our drying procedure. We still have the equipment and still plan on installing it once we get this expansion of the potato industry taken care of.

Q. And you expect that to happen in the near future, Mr. Jones?

A. We have been expecting it to happen every year.

Q. Mr. Jones, would you be able to use your present distribution system to handle the sales of dehydrated onions?

A. Yes, we would.

Q. Now, Mr. Jones, the dehydrated onion producers are now trying to promote the use of a product that is sometimes called, "Instant" onion?

A. Yes.

Q. What is instant onion, Mr. Jones?

A. Well, it is dehydrated onions that are processed to a given size so that they will have uniform and instant rehydration.

Q. And how would this product be sold?

A. Well, sold as any other product, retail, institutional uses.

Q. Isn't this product designed primarily for the housewife market, Mr. Jones?

A. Yes, it is.

Q. That is, as a substitute for raw onion to be used
385 in the kitchen by the housewife; isn't that right?

A. Yes.

Q. Now, if housewives started using this dehydrated onion in preference to the raw onion in substantial amounts, Mr. Jones, this would open up a very broad market for dehydrated onion, wouldn't it?

* * *

[Objection by Mr. Hays overruled.]

* * *

The Witness: Oh, we felt that if a product and method of distributing it can be developed to get to the housewife, that we'd probably, maybe, double or treble
386 the present use of dehydrated onions.

By Mr. Walker:

Q. And if this market were opened up, would that have an impact on the J. R. Simplot Company's decision as to whether they would go back into the onion dehydration?

A. I don't think that would be a deciding factor, no.

Q. But, if the market were open, you would want to take advantage of it, wouldn't you?

A. Yes.

Q. Has the J. R. Simplot Company given any consideration as to how such a product, that is, this instant onion, might be distributed by them?

A. Through our present outlets.

Q. And would one of those outlets be General Foods?

A. I would hope so. We would try, anyway.

* * *

389 Q. Does raw onion, in your opinion, compete with the dehydrated onion, Mr. Jones?

A. Yes, it does.

Q. In your opinion, based upon your experience, would a price increase—could a price increase in dehydrated onion cause any present users of dehydrated onion to shift to the raw product?

A. Definitely it would.

Q. Would the same thing be true of garlic, or do you know as to garlic?

A. I don't know about garlic.

Mr. Walker: No more questions, Your Honor.

* * *

395 Q. During that period [World War II], did the Government purchase instant onion?

A. They purchased dehydrated onions at that time.

Q. But not instant onion?

A. They weren't known as "instant onion" at that time.

Q. When I say "instant onion," I am referring to this new type of produet that you mentioned, which would, by the addition of water, immediately become reconstituted.

A. I think I previously stated that to my knowl-
396 edge the what is known now as "instant onion" has been a product of the last four or five years.

Q. In so far as your testimony on cross-examination went, I believe you referred to raw onion as competing with dehydrated onion. Is that correct?

A. Yes.

Q. Is it competitive in so far as all users of the dehydrated product are concerned?

A. It could be.

Q. Is it?

A. Well, I think it would — we have some very large users of onions who do not use dehydrated in manufactur-

ing. So, therefore, I can't help but say that it is competitive.

Q. In so far as the present users of dehydrated onion are concerned, what price differential would cause them to shift to the raw product?

A. I couldn't say.

* * *

Recross Examination

By Mr. Walker:

Q. Mr. Jones, I think possibly there is some confu-
397 sion in the record here as to precisely what this product that is called instant onion is. Isn't it true, Mr. Jones, that the product that has been called and is being called "instant onion" is not materially different from dehydrated onion that has been usually sold to, let us say, institutional users?

A. There isn't any, as far as I know, there isn't any difference at all.

Q. The only difference is that this product is being packaged for sale to a housewife, so that a housewife can do the same thing with the dehydrated onion that an institutional user now does, is that right?

A. I think so, yes. I think the connotation of "instant" is something that has come into our food vocabulary rather recently in terms of development, and I would say that the addition of the "instant" to the onion is something to give it a little more appeal to the housewife.

Q. Mr. Jones, do you have knowledge of the promotional efforts that are being put into effect now in this area of the instant onion?

A. Partially, yes.

Q. Do you feel that you have full knowledge of all promotional efforts that are being done on this?

A. No, I do not.

Q. There could be promotional efforts that are going on of which you are not aware, is that right?

398 A. Yes.

Q. Isn't it true, Mr. Jones, that the dehydrated potatoes replaced the raw potatoes in the food manufacturing industry to a certain extent?

A. In the meat industry, I would say, yes.

Q. You testified, I believe, Mr. Jones, that it requires or did require much money to promote the dehydrated potato product for sale to the consumer. Is that right?

A. Yes.

Q. Isn't it true, Mr. Jones, that a substantial portion of this promotion was done by distributors of the product rather than manufacturers of the product?

A. It has been done by both.

Q. The distributors have promoted the product, is that right?

A. Yes.

* * *

399 JAQUELIN HUME was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Mr. Hume, will you spell your full name for the reporter, please?

A. Jaquelin H. Hume, J-a-q-u-e-l-i-n H-u-m-e.

Q. Where are you employed?

A. Basic Vegetable Products, Inc., San Francisco.

Q. And you are here as a result of a subpoena served upon you?

A. I am.

Q. Do you have that here, sir?

A. Here (indicating).

Q. In addition to this subpoena ad testificandum, you are also making response to a subpoena duces tecum directed to another official of your company?

A. I am.

Q. Do you have that subpoena with you, sir?

A. Yes.

Q. What is your present position with Basic Vegetable Products Company.

A. Vice-President.

Q. How long have you held that position?

400 A. Since '46.

Q. And did you hold any positions with any predecessor companies prior to 1946?

A. I did.

Q. Your answer is yes?

A. Yes.

Q. What was that, sir?

A. I was a partner in a previous organization, Basic Vegetable Products Co.

Q. Was there any relationship between that partnership and the present corporation?

A. The present corporation succeeded to the business of the partnership.

Q. How long were you in that particular partnership?

A. About 1938.

Q. Were you associated with any other predecessor organization prior to 1938?

A. Yes.

Q. What was that, sir?

A. Basic Vegetable Products Company, a corporation.

Q. Was that related to the succeeding partnership in any way?

A. It was.

Q. In what way was it related?

A. The succeeding partnership took over the business of the corporation.

401 Q. How long were you with that corporation?

A. From 1933.

Q. Since 1933 have you been engaged in the processing

and sale of dehydrated onion and dehydrated garlic?

A. Yes.

Q. Through these three organizations that you have described?

A. Yes.

Q. In so far as the present corporation is concerned, the correct corporate name of that is what, sir?

A. "Basic Vegetable Products, Incorporated," or "Inc." I-n-c.

Q. Where is its principal place of business?

A. 120 Montgomery Street.

Q. San Francisco?

A. San Francisco.

Q. Where are its plants located?

A. Vacaville, California, and we have recently built a new plant at King City, California.

Q. How long has the Vacaville Plant been in operation?

A. Since 1933.

Q. What has it processed during that period?

A. It has processed onion and garlic and from time to time other vegetables.

Q. When you say "processed," will you describe the type of processing done at Vacaville?

402 A. Vegetables are brought in in the fresh or raw form from the fields where they are grown, are finished-cured, if necessary, at the plant, are peeled and trimmed and sliced, are dehydrated to remove moisture, and are milled to final size and then shipped to customers.

403 Q. Will you describe the type of processing done at your King City plant?

A. The same.

Q. How long has that been in operation, sir?

A. About three months.

Q. In so far as dehydrated onion and garlic are con-

cerned, how long have you processed that product, those products?

A. Since 1933.

Q. And you processed them continuously since that time?

A. Yes.

Q. Since January 1, 1950, how have dehydrated onion and garlic been sold?

A. May I ask you—I am not quite clear by the meaning of "how."

Q. I am—I refer to the method of distribution.

A. We have our own sales force, our own sales organization, and we sell direct to the manufacturing users through that sales organization. We also sell our product to resellers, who supply other manufacturers who will supply manufacturers, or who supply institutional users.

Q. In so far as the manufacturers are concerned, that use your product, will you describe the type of manufacturers that use your product and the purpose for which it is used?

A. Well—

Q. I refer to dehydrated onion and dehydrated garlic.

404 A. These products are used by food processors and by repackers of food products, and food processors use it to give flavoring to food products, and the repackers use it either to mix with salt and sell to the consumer, or to sell in the form of—without any mixture in bottles or packages to the consumer.

Q. And in so far as the institutional users are concerned, how do they use your products, onion and garlic?

A. They use them in place of raw vegetables.

Q. Since January 1, 1950, where have you sold dehydrated onion and garlic?

A. I have sold it nationally.

Q. During that period, are you familiar with the names of your competitors in dehydrated onion and garlic?

A. I am.

Q. Will you state their names for us?

A. C. V. Gentry Company, I believe it is called Gentry, now, a Division of the Consolidated Foods, are our largest competitor. Puccinelli Packing Company is a competitor, and recently the J. R. Simplot Company have been a competitor.

Q. Have each of these companies been competitive in both dehydrated onion and dehydrated garlic?

A. Simplot, to the best of my knowledge have not made dehydrated garlic, but they have been competitive in onion.

Gentry and Puccinelli have been competitive in both
405 onion and garlic.

Q. Is some dehydrated onion and dehydrated garlic sold in the United States which is not processed there?

A. Yes.

Q. Where is that product processed?

A. The best of my knowledge, it is processed in Egypt. There may be some processing in Holland, some processed in Holland. I am not clear about that.

Q. Does the processing take place entirely without the United States?

A. The product that you are talking about, do you mean? I will have to ask you to clarify that.

Q. The product that is sold in the United States which you refer to as being processed in Egypt and Holland.

A. Yes.

Q. Is the processing completed outside of the United States in those situations?

A. I would imagine that in some cases, the product is rescreened or cleaned in this country, and to that extent it

would perhaps be called a further processing. The bulk of it, to the best of my knowledge, is sold in original containers, without any reprocessing.

Q. And to whom is it sold?

A. You are speaking of the imported product?

Q. Yes.

406 A. It has been sold largely to the bakery trade in New York.

Mr. Walker: That was the bakery trade?

The Witness: Bakery.

By Mr. Hays:

Q. What is your opinion as to the amount of total garlic and onions sold in the United States, the amount that is accounted for by the type of dehydrated onion and dehydrated garlic that is processed outside of the United States?

Mr. Walker: Could I have the question read back, please.

Hearing Examiner Kolb: Read the question.

(Question read.)

By Mr. Hays:

Q. My whole question is directed to dehydrated onion and dehydrated garlic.

A. I believe about 5 per cent.

Q. I believe you stated that the bulk of that was sold to the bakery trade in New York City; is that correct?

A. That is correct, to the best of my knowledge.

Q. Did you bring with you a response to a Subpoena Duces Tecum directed to Mr. William Hume of your company?

A. I did.

Mr. Hays: I ask that the document be marked as Commission's 123-A, a certificate by T. A. Bringerhoff, Controller, Basic Vegetable Products, Inc.; Commis-

407 sion's Exhibit for identification 123-A, refers to a document 123-B, which is authenticated by 123-A, and 123-B is a document headed "Basic Vegetable Products,

Inc., Analysis of Pounds Sold By Product Years 1950 through 1957."

Hearing Examiner Kolb: 123-A is a certificate; 123-B is the analysis of sales.

(The documents referred to were marked Commission's Exhibit 123-A and 123-B respectively for identification.)

By Mr. Hays:

Q. I direct your attention to Commission's Exhibit for identification 123-B, and ask you to state whether or not all of the figures on there, other than the years are pound figures?

A. They are.

Q. In the first column "Total Sales," refers to what, sir?

A. Total pounds sold.

Q. Of what, sir?

A. All products we sold.

Q. The second column "Onion Sales," refers to—

A. Pounds sold.

Q. Of onions?

A. Yes.

Q. And the third column "Garlic Sales," refers to—

A. Pounds sold of garlic.

Q. And the next and last column of the "Other 408 Products," refers to what, sir?

A. Pounds sold of other products.

Mr. Hays: I offer Commission's Exhibit for identification 123-A and 123-B.

Mr. Walker: I assume you will develop what these "Other Products" are that are referred to here, Mr. Hays?

Mr. Hays: I shall develop what they are, your Honor.

Mr. Walker: No objection.

Hearing Examiner Kolb: The document may be received in evidence as Commission's Exhibit 123-A and B.

(The paper referred to, heretofore marked Commission's Exhibit 123-A and 123-B for identification was received in evidence.)

By Mr. Hays:

Q. As was suggested by Mr. Walker, will you describe what these other products are that are reflected in 123-B?

A. They are dehydrated potatoes, and dehydrated celery, peppers, and carrots.

Mr. Walker: May I just for my own information find out at this time, Mr. Hays, if that is all dehydrated products?

Mr. Hays: Yes.

By Mr. Hays:

Q. Will you state whether or not the products indi-
409 cated and the sales indicated on Commission's Exhibit 123-B are all dehydrated products?

A. They are.

(Short pause.)

By Mr. Hays:

Q. Mr. Hume, are there any advantages to the use of dehydrated onions and garlic over raw onion and raw garlic?

A. Yes.

Q. Will you state what those advantages are?

A. Uniformity of quality, both flavor and price has been one of the most important. A uniform price structure has been another advantage; ready availability throughout the year is another advantage; saving of labor in the preparation of the vegetable has been an important advantage. I believe those are the principal advantages.

Q. Will you explain what you mean by "uniformity of quality"?

A. Fresh onions as normally used in food manufacturing coming during the twelve months, come during the twelve months from a variety of different producing areas. The onions produced in certain areas, for instance in Texas,

are considerably more mild than the onions that are produced in the Northern Districts.

A food manufacturer using the raw vegetable is forced to use Texas-grown or Southern-grown onions during the times of the year when Northern-grown onions are not
410 available, so as a result of this, he pays considerable difference in pungency and flavor.

In addition, the periods in the year following harvest when the only onions available are from storage, where the onions have been in storage for a considerable time, these onions will have deteriorated, frequently sprouted, or have begun to spoil, and the flavor will have fallen off. Those are the quality uniformity, uniformity of quality.

On the other hand, the dehydrated product has none of these disadvantages. It is processed in the peak of the season, and it has thrived to a point where it does not deteriorate, so it can be sold throughout the twelve months, and it can offer a uniform quality of flavor.

Q. Have you found that your customers have recognized the advantages of the dehydrated product over the raw product?

* * *

411 The Witness: Yes.

By Mr. Hays:

Q. What do you mean by "uniformity of price structure" as an advantage?

A. The price of the raw onion has varied historically very widely. It will go from lows of 50¢ up to highs of $6 and $8 a hundred-pound-bag. On the other hand, our price has remained very constant during each year. Our costs are determined by the costs we pay for contract onions, and the labor cost in processing it, and we have had, always had relatively small changes in the price during the year, so that a man can be sure that his onion flavor will have a cost that he can determine if he buys dehydrated products.

Q. What do you mean by "ready availability," as an advantage of dehydrated onion over the raw product?

A. The raw onion used by manufacturers, as I said, may have to come from Texas or from a far distant point during certain times of the year. And there have been several times in recent years when the old supply was almost entirely exhausted before the new supply came in; as a result of this, there was a gap in the availability of onions.

Q. What do you mean by "saving of labor," as an advantage?

412 A. When the raw onions are used, they must be peeled, they must be sliced and they must be chopped into the proper form, and then in many food products, the cooking, after the cooking, they must be strained out. They do not want pieces of onions in those products.

Dehydrated product, on the other hand, is ready when the water is added to it for immediate use without any additional preparation; if the manufacturer has a product that he wants to have no onion pieces in, he can purchase a finely milled dehydrated onion.

* * *

Q. In so far as your classes of customers are concerned, has there been any indicated preference for dehydrated products over the fresh product; that is, onion and garlic?

A. Yes. That preference has gone to a point where people have stated that they cannot —

Mr. Walker: Your Honor, I move to strike the 413 witness' testimony at this point, as being not responsive to the question. He has answered the question, "Yes."

Hearing Examiner Kolb: He is explaining his answer "Yes," and I think it is proper.

You may proceed.

The Witness: Would you read what I started to say, please.

(Question read; and answer read.)

The Witness: Operate their processing without the use of dehydrated onion. It came up during the War when certain food manufacturers were not able to get the dehydrated onion, because the Government had frozen it all for military use, and those food manufacturers— or one that I have in mind—went to the War Production Board and stated that they would be unable to process, in this case, catsup, without the use of dehydrated onion, because they had no facilities for using raw vegetables any more.

Mr. Walker: Your Honor, I am forced to move to strike the last response by the witness on the grounds that on its face that it reports a conversation apparently by a third party with another third party, none of whom are identified or are in the courtroom. It is obviously double hearsay.

Hearing Examiner Kolb: Yes, the portion may be stricken referring to conversations with other parties.

414 By Mr. Hays:

Q. Since January 1, 1950, I believe you stated that you had salesmen that sold accounts, to accounts, direct?

A. Yes.

Q. Since that date, has your number of salesmen so engaged increased, decreased, or remained the same?

A. It has increased.

Q. For what reason has it increased?

A. We felt, to hold our competitive position, it was necessary to have additional salesmen.

Q. Since the end of World War II, what are the facts with reference to the use of dehydrated onion and garlic as compared with the use of the raw onion and garlic by your customers?

A. The use of dehydrated onion has increased in relation to the raw onion in the manufacturing field, particularly.

Q. Has it increased continuously since the end of World War II?

A. Yes.

Q. Will you describe the method by which raw onion and raw garlic are sold to manufacturers and others desiring to buy that product, the method of distribution?

A. You are asking me to describe that?

Q. Yes.

A. In general, it is sold through produce houses, in
415 some cases it is sold directly by growers to the processor.

Q. Will you describe generally the type of facilities that a user of the raw product would have to have?

A. A user of raw onion and garlic has to have usually a chilled storage area, unless he is going to use up his material relatively quickly, his raw product; he has to have a relatively large storage area because of the bulk of the vegetable, in comparison, that is, to the dehydrated. He then needs areas in which the product can be peeled and trimmed. The peeling is done either by hand or machine; in a large operation it would be done by machine, with hand final trimming. He needs slicers. And if the product is to be made quite small, they need grinders.

Then, they need containers in which to move the product.

* * *

416 *Cross Examination*

By Mr. Walker:

Q. I call your attention to Commission's Exhibit 123-B, which is the statement of Basic sales that was described by you on your direct examination. You know the document that I am referring to, do you?

A. Yes.

Q. Do I understand correctly, Mr. Hume, that these sales refer to no products other than dehydrated products? Is that correct?

A. That is right.

Q. Does your company or any related company, Mr. Hume, sell raw onions and garlic?

A. What do you mean by "related"?

Q. Any company that is related to individuals or through a corporate relationship to Basic Vegetable Products, Inc.

A. I am not clear about the relation by individuals. Will you amplify on that?

Q. Are you personally associated in any way with any company, Mr. Hume, that sells raw onion or garlic?

A. Yes.

417 Q. What is the name of that organization, please?

A. Sunspiced Vegetables, Incorporated.

Q. Where is that company located, sir?

A. Vacaville.

Q. Is that plant the same as or separate from the plant that Basic Vegetable Products, Inc., has in Vacaville?

A. Sunspiced does not have a plant.

Q. What facilities does it have in Vacaville?

A. It has an office and a scale and it has some packing equipment.

Q. Is the office in the same building as the office of Basic Vegetable Products, Inc.?

A. No.

Q. What is your association with that company, Mr. Hume?

A. I am Vice-President, a Vice-President.

Q. Who is the President?

A. Albert Porter.

Q. Does Mr. Porter also work for Basic Vegetable Products, Inc?

A. Yes.

Q. In what capacity, please?

A. Vice-President.

Q. Is Mr. William Hume associated in any way with Sunspiced Vegetables, Inc.?

A. Yes.

418 Q. In what capacity, please?

A. Vice-President.

Q. Would you please describe in general terms, Mr. Hume, the business in which Sunspiced Vegetables is engaged?

A. It is in the business of contracting with farmers to raise onions and garlic and other vegetables, selling these vegetables to Basic and selling the vegetables also in the open market in the form of fresh produce.

Q. This is true of both onion and garlic?

A. Yes.

Q. Mr. Hume, do you know of any large food processors or manufacturers who use the raw product instead of the dehydrated product, referring to onion?

A. Use—now, I will ask you to amplify "used". What do you mean by that?

Q. In connection with the manufacture of food products which they prepare for sale.

A. Well, a large amount of fresh onion is used in manufacturing.

Q. Do you know of any large food manufacturer that uses raw onion and not dehydrated onion in connection with the preparation of other food products?

A. Yes, I do.

Q. What names come to your mind, Mr. Hume?

A. Campbell Soup is the leading name.

419 Q. As a matter of fact, Campbell Soup Company uses the raw onion entirely in its soups, doesn't it, Mr. Hume?

A. I am not familiar with that, exactly what they use. We sell them a reasonable amount of dehydrated onion. I can't tell you what they use it in.

Q. You don't know what they use it in?

A. No.

Q. But you do know that they use raw onion?

A. Yes.

Q. And you do know that they use raw onion in making their soups; is that right?

A. Yes.

Q. Do you know of any other companies that use the raw product, that is, either onion or garlic, in the same sense that Campbell does?

A. Yes.

Q. Would you please name the companies that come to your mind?

A. Well, several companies making, or some companies making, pickled herring use raw onion.

Q. Pickled herring?

A. Yes. I think one is named "Vita-Foods". And some companies making chop suey use raw onion.

Q. Is that all you can think of, Mr. Hume?

A. I think, I imagine I could think of others.

420 Q. There are many of the picklers, as a matter of fact, that use the raw product instead of the dehydrated product in connection with pickle manufacturing; isn't that right, Mr. Hume?

A. In certain forms the dehydrated product is not suitable for use. In certain forms—

Q. Excuse me, please, Mr. Hume.

* * *

Q. * * * Are there many pickler manufacturers that use raw onion in the manufacture or preparation of pickles?

A. Yes.

421 Q. Your salesmen call on the Campbell Soup Company, don't they?

A. Yes.

Q. And your salesmen are constantly trying to get the

Campbell Soup Company to use more dehydrated onions, aren't they?

A. Yes.

Q. Have you been at all successful in increasing your dehydrated onion sales to the Campbell Soup Company?

A. No.

Q. Mr. Hume, have you ever had a customer who purchased dehydrated onion from you, who switched to the use of raw onion?

A. Yes.

Q. Approximately, Mr. Hume, what proportion of the sales of onion and garlic, fresh onion and garlic, by Sunspiced Vegetables, Inc., are to Basic Vegetable Products, Inc.?

A. I believe about 80 per cent.

Q. Thank you.

Mr. Hume, over the years during and since World War II your company has sold substantial amounts of dehydrated onion and garlic to the Government, hasn't it?

A. Yes.

Q. And those sales were very substantial during World War II, were they not?

422 A. Yes.

Q. And those sales were very substantial during the Korean War; is that right?

A. Yes.

Q. And after the end of the Korean War you sold much less to the Government than you did during the Korean War; isn't that right, Mr. Hume?

A. Yes.

Q. So that the decrease in your company's sales in the year 1952, as compared to the year 1951, is at least in part due to a decrease in sales to the Government; is that right?

The Witness: Would you read the question again, please?

(Last question read.)

A. Yes.

By Mr. Walker:

Q. Mr. Hume you recall that on direct examination you were asked about and testified concerning the usage of the imported dehydrated onion and garlic. Do you recall that testimony, sir?

A. Yes.

Q. Is the imported dehydrated onion and garlic in competition in any market in the United States with the domestic dehydrated onion and garlic, Mr. Hume?

A. Yes.

423 Q. Isn't it a fact, Mr. Hume, that if the price of domestic dehydrated onion and garlic increased substantially, that some present users of the domestic product would switch to a use of the foreign product?

A. I think I would have to say I don't know.

Q. You don't know of any that would?

A. I think I would have to say that.

Q. Do you know of any of your customers that have purchased from you and then later purchased the foreign dehydrated product?

A. Yes.

* * *

435 By Mr. Walker:

Q. Mr. Hume, does your company presently process or distribute any product that is known as instant onion?

A. Yes.

Q. Will you describe that product, please?

A. Instant onion is a piece of onion that has been screened through an 8-mesh and left on a 20-mesh screen, processed. Aside from that screen, it is processed in the same way that all of the rest of our onion is processed.

Q. How is the product packaged, sir?

A. I will have to ask you by whom?

Q. By you?

A. In drums and in five-gallon cans.

Q. And to whom do you sell it, sir?

A. We sell it to food manufacturers. In the majority we also sell it to a group of repackers.

Q. And do any of these repackers that you sell it to repack it for sale at the retail level?

A. Yes.

Q. What are those companies that repack the prod-
436 uct, the companies that repack it for resale at the retail level?

A. I didn't get the first —

Q. What are those companies that repack this product for resale at the retail level?

A. They are repackers.

Q. What are the names of them, Mr. Hume?

A. Oh, I am sorry.

Q. That is all right.

A. Borden's; R. T. French, and other spice grinders.

Q. What is the full name of the Borden's Company, if you recall, please?

A. I can't recall.

Q. Is that Borden's Food Company?

A. That I don't know, whether that is the full name of the Borden Milk Company.

Q. Under what name is this product sold at the retail level, Mr. Hume?

A. Instant Minced Onion.

Q. And that is what it is called by both Borden and R. T. French?

A. Well, I will have to say that I believe that French is calling it now instant. We have been trying to get them to call it instant.

Q. And where is this product sold at retail, do you know?

A. I would say it is sold in many parts of the country.

437 Q. For how long has it been so sold at retail, Mr. Hume?

A. About three years.

Q. Does McCormick purchase any dehydrated onion or garlic from you for repackaging and sale on the retail level?

A. Yes.

Q. Would that also be called instant onion, an instant onion product?

A. Well, a portion of what they buy from us and resell at retail they call "instant," and another portion they do not.

Q. Are your sales of this instant onion product increasing, Mr. Hume?

A. Yes.

Q. Do you sell any of this instant product to the Heinz Company?

A. Not as instant.

Q. Do they market any instant onion product that you know of?

A. No.

Q. You don't know or they do not?

A. Well, I do not know. I don't know. I do not know of their marketing any.

Q. And this instant onion is intended, even when it is sold to the housewife at the retail level, to replace the raw onion in the home; is that right?

A. Yes.

* * *

439 JAQUELIN H. HUME heretofore called as a witness for the Commission, having been previously sworn, testified further as follows:

Redirect Examination

By Mr. Hays:

Q. Directing your attention to your testimony with reference to the so-called instant onion that is being prepared

for ultimate retail sale to the housewife, when did you first start preparing that type of onion?

A. Two to three years ago.

Mr. Walker: Was that two to three years ago?

The Witness: Yes, sir.

By Mr. Hays:

Q. Before you started preparing that, I guess you didn't sell any. Is that correct?

A. We sold a product that is, or was, already exactly the same, to manufacturers to use —

Q. But not for retail sale to the housewife?

A. No.

Q. And have your sales increased since you began?

A. Yes.

Q. In 1957, what were your sales, approximately, 440 of this type of product?

A. Well, this would be a guess: I would think 150 thousand pounds possibly.

Q. Now, this is designed to be sold to housewives, is that correct?

A. Yes.

Q. And where will the housewife buy the product?

A. Grocery stores.

Q. In 1957, percentagewise, approximately what percentage of your total sales was made to institutional users?

A. Approximately 10 percent.

Q. Approximately what percentage of your sales was made to manufactured food processors?

A. I would say 85 percent.

Q. And the remainder, that is, the remaining 5 percent, would be sold to what classes of customers?

A. To repackers, who packed it for resale, or made it into onion or garlic salt, also for resale.

Q. I would like to talk a minute about these manufactured food processors, that portion of your sales. What

type of food processors do you sell to? Name all of them, if you can.

Mr. Walker: So that the record will be clear, are all of these questions relating to both onion and garlic?

Mr. Hays: Yes.

Mr. Walker: Dehydrated onion and garlic, is that
441 right?

Mr. Hays: Yes.

A. We sell to canners.

By Mr. Hays:

Q. Canning what products?

A. A wide range of manufactured food. Catsup is an important one, chili sauce, many canned meat products, a great many canned soups, spaghetti sauces, similar types of sauces. We sell to pickle manufacturers for use in relish or in dill pickles or in other combination pickle products. We sell to sausage manufacturers for use in sausage, as such, and also in canned meat products. Your question was as to food manufacturers?

Q. Yes, sir.

A. We sell to dry soup manufacturers. We sell to manufacturers of some sauces that are bottled rather than canned. We sell to Chinese firms which make Chinese dishes, such as chili con carne and — I mean chop suey, and similar products. I am sure I have forgotten some important ones, but those cover quite a considerable portion of our [illegible word].

Q. In so far as the individual classes of food processors that you have named are concerned, will you describe the degree of interchangeability between the dehydrated product and the raw product, since 1951, that you are aware of?

A. Well, in the dry soup manufacturers, there is no change, because they are unable to use anything ex-
442 cept the dehydrated product, by the very nature of their business.

Many other products, the manufacturer was in a position to change back and forth, and when the product was orig-

inally introduced did make such changes with some frequency. However, the advantages other than cost of using the dehydrated product, the uniformity of quality and the other advantages that I mentioned today, and the just general difficulty of changing your process from one product to another and back again, when the products were different in use, with regard to fresh or dehydrated onion, has resulted progressively in less frequent change, as far as manufacturers that I know, to the point where I think it happens relatively seldom.

Q. When it happens, has it happened more in any one particular group of processors than other processors?

A. I don't believe it has happened more in one group than another. I think there are some individuals in each group who are extremely cost-conscious and whose change to the dry product, the dehydrated product, was for a reason primarily of cost rather than quality, and they have made the change to dehydrated; and there are people of that kind in each class of industry that I have mentioned.

Q. I believe you said that in 1957, approximately 85 percent of your products, dehydrated onion and dehydrated garlic, were sold to the manufacturers, food processors, and approximately 5 percent were sold — approximately 10 443 percent were sold to institutional users.

Now, has that percentage changed since 1951, and the years following up to 1957, or is that percentage applicable to each of those years?

A. I think our sales to institutions has decreased somewhat as a percentage in that period, and our sales to manufacturers has increased somewhat, and I think that perhaps the sales to repackers has increased somewhat.

Q. During those years, 1951 to 1957, in which of those years did you sell dehydrated onion and garlic to the Government?

A. I wouldn't want to answer that without having more data before me. I would say that in most years —

Q. What was the year in which you sold most pound-wise to the Government?

A. 1951 and 1952.

Q. Approximately what percentage of your sales, pound-wise, in each of those products was made to the Government in 1951 and 1952?

A. I wouldn't want to answer that without having data before me.

Mr. Hays: That is all the redirect I have, Your Honor.

Recross Examination

By Mr. Walker:

Q. Mr. Hume, did you include your sales to distributors who in turn sell to institutional users within the 10 444 percent that you said was applicable for 1957?

A. Yes.

Q. Well, Mr. Hume, just so we will have it in the record, on what do you base, or from what source did you obtain this information that you testified about concerning the answers you gave about your customers shifting from dehydrated to raw or vice versa?

A. Information that was given by me by — the information was given to me by my customers when I was selling, primarily.

Q. When was that, Mr. Hume?

A. I did a good deal of selling up to about four or five years ago.

Q. Haven't done any since that time?

A. Yes, I still do some.

Q. A little?

A. Yes.

Q. Most of your information was acquired on this subject prior to four years ago?

A. Yes.

ROBERT SPARLING was thereupon called as a
445 witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Will you spell your name for the reporter, Mr. Sparling?

A. Robert Sparling, S-p-a-r-l-i-n-g.

Q. What is your home address?

A. 930 Newell Road, Palo Alto.

Q. Where are you employed? Where are you presently employed?

A. Basic Vegetable Products, Incorporated.

Q. You are here as the result of a subpoena served upon you?

A. Yes, sir.

Q. Do you have the subpoena? Will you hand it to me, please? Thank you.

How long have you been employed by the Basic Vegetable Products?

A. 13½ years.

Q. During this 13 years, what did you do?

A. I started at Basic in the Canning Department, was there for a little over a year, and I was transferred to the Sales Department here in San Francisco, and since that time I have been working primarily with sales and sales distribution.

Q. How long have you been working primarily with sales and sales distribution?

446 A. It would be a little over 12 years.

Q. At the present time, how many sales offices does Basic have?

A. We have three offices.

Q. Where are they located?

A. We have one in San Francisco; another in Chicago, Illinois; another in Plainfield, New Jersey.

Q. At the present time, where do you have warehouses located?

A. We have warehouses in Boston, Massachusetts; Brooklyn, New York; Elizabeth, New Jersey; Baltimore, Maryland; Rochester, New York; Buffalo, New York; Cleveland, Ohio; Cincinnati, Ohio; Columbus, Ohio; Detroit, Michigan; Chicago, Illinois; Indianapolis; Louisville; St. Louis; Miami; Kansas City; Dallas; San Antonio; Los Angeles; Vacaville; Minneapolis. I believe I haven't missed anything.

Q. Are these warehouses owned by your company?

A. The Vacaville is the only one that is owned by our company.

Q. They are public warehouses, I take it?

A. Yes.

Q. Do salesmen operate out of each of your branch offices?

A. Yes.

Q. And since 1950, what have your duties been with reference to the salesmen?

A. I have been supervising salesmen and have been 447 directing the sales efforts of this company.

Q. During the period January 1st, 1950 to the present time, who have your competitors been in the sales of dry onion and garlic?

A. Gentry Division of Consolidated Foods; Puccinelli Packing Company; the J. R. Simplot Company, and imported dried onion and garlic.

Q. Subsequent to April 1st, of 1951, and continuing to the present, has the competition manifested by the Gentry Division of Consolidated Foods Corporation increased, decreased, or remained the same?

Mr. Walker: Just a moment, please.

May I have that question read?

Hearing Examiner Kolb: Yes.

(Question read.)

Mr. Walker: I will object, Mr. Examiner. The question calls for an opinion and a conclusion and inquires into a state of mind. I think Mr. Hays can ask questions about the facts relating to competition, but I do not object—I do object, rather, to the conclusions that are asked for, and also that it is a conclusion which is one of the precise issues in this case.

Hearing Examiner Kolb: I think a man who is in charge of sales would know the competition, would know whether it would decrease or increase or remain the same, and 448 that is all he is asked.

Objection overruled.

Mr. Walker: Yes.

The Witness: The competition has increased.

By Mr. Hays:

Q. How has that increased competition manifested itself?

A. I don't quite understand what your meaning is in the particular — in the particular form?

Q. Yes.

A. Originally, we didn't have nearly as many warehouses, and we have been, to be competitive, we had to open many additional warehouses than prior to 1951.

We have had to add men to our sales force and to give a more, give more service to the customers, we have also had to do considerable work in developing of new products and new ideas to maintain our position in the field, because we seem to be losing business with old buyers.

Q. Mr. Sparling, in your opinion, has Basic Vegetable Products Company lost any dehydrated onion or dehy-

drated garlic sales as a result of their relationship between Gentry and Consolidated since April 1st, 1951?

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448-449 [Objection by Mr. Walker that the question called for opinion was overruled.]

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449 The Witness: Yes.

By Mr. Hays:

Q. Will you state what sales you refer to?

A. Are you referring to individual companies?

Q. Yes.

A. We have lost business to the Olympia Mushroom Company; Frank M. Wilson Canning Company; Col-
450 lege Inn; Rival Packing Company; Wass Food Products; Lake Odessa Canning Company; J. J. Gielow & Sons; the Woolson Spice Company; Les Pommiers; Moore & Company; Venice Maid Company, Aurora Frozen Foods; Armour & Company; J. L. Read; Joseph De Frates; Gerber Products Company; the Indiana Mushroom Company; Bedford Food Products; the Michigan Mushroom Company; Blue Seal Foods; Blue Points; P. J. Ritter Company; Oscar Mayer & Company; George A. Hormel. I believe that is all I can think of now.

Q. In your opinion, has Basic Vegetable Products Company failed to obtain new business from customers of Gentry as a result of the relationship between Gentry and Consolidated since April of 1951?

Mr. Walker: I will object, Your Honor, on the grounds the question is leading and calls for an opinion and conclusion. And if I understand the question correctly, it is also speculative.

Hearing Examiner Kolb: I don't think the witness is qualified to answer that question as put to him. I will sustain the objection.

By Mr. Hays:

Q. Are you familiar with a Fred A. Albrecht Grocery Company in Akron, Ohio?

A. Will you repeat your question?

Q. Are you familiar with that company?

A. Yes.

451 Q. Has your company made any sales to that company since April of 1951?

A. No.

Q. Are you familiar with the Central States Coffee & Spice Company in St. Louis, Missouri?

A. Yes.

Q. Has Basic made any sales to that company since April of 1951?

A. No.

Q. Are you familiar with the J. F. Conrad Grocery Company in St. Louis, Missouri?

A. Yes.

Q. Has Basic made any sales to that company since April, 1951?

A. No.

Q. Are you familiar with Frank Bros. in Chicago?

A. In Chicago?

Q. In Chicago, Illinois?

A. Yes.

Q. Has Basic made any sales to that company since April, 1951?

A. Yes.

Q. To what extent?

A. The quantities have been rather small. I believe it was less than 300 pounds the first year, in 1953. And there has been an increase, we have sold to them each year;

452 I doubt if any year was over 2000 pounds.

Q. When was the year of your first sale?

A. 1953.

Q. Are you familiar with the Halben Food Manufacturing Company in St. Louis, Missouri?

A. Yes.

Q. Since April of 1951 has Basic sold any products to that company?

A. Yes.

Q. When was the date of the first sale?

A. There was only one sale. It was in 1952.

Q. In what amount?

A. A hundred, I think it was a hundred and fifty or—about one hundred fifty pounds.

Q. Are you familiar with Herschel-California Food Products, also known as the Herschel Canning Company, in San Jose, California?

A. Yes.

Q. Has Basic made any sales to that company since April of 1951?

A. Yes.

Q. When was the date of the first sale?

A. 1953.

Q. Describe the extent of the sales since the first sale to the present?

453 A. That firm operates under another name.

Q. Will you describe what the name of that firm is?

A. Contadina Foods. We sold them about, oh, less than 2000 pounds in 1953. And we have sold them small amounts since then. I don't believe we have ever sold them that much in one year, other than, well, less than 2000 pounds.

Q. And are you familiar with the Jewel Tea Company in Chicago?

A. Yes.

Q. Since 1951 has your company sold Jewel Tea any products?

A. No.

Q. Are you familiar with S. S. Kahn & Sons, of Evansville, Indiana?

A. Yes.

Q. Since April of 1951, has your company sold them anything?

A. I don't believe I could answer that right now. I am not sure.

Q. Are you familiar with the firm of Kothe, Wells & Bauer, in Indianapolis, Indiana?

A. Yes.

Q. Since April, 1951, has your company sold them anything?

A. Yes.

Q. When did you first start selling them?

A. 1958.

Q. What amount did you sell them?

A. We have sold them about 1500 pounds.

454 Q. Are you familiar with the Libby, McNeill & Libby Company, in Chicago?

A. Yes.

Q. Has your company sold them anything since April, 1951?

A. Yes.

Q. When was the date of the first sale?

A. The date of the first sale?

Q. Yes.

A. I have been in the Sales Department since 1948, and we have been selling them ever since that time.

Q. Are you familiar with the Lincoln Food Exchange in Chicago?

A. Yes.

Q. Has your company sold to them anything since April of 1951?

A. No.

Q. Are you familiar with the Morton Products Company in Chicago?

A. Yes.

Q. Has your company sold them anything since April, 1951?

A. Yes.

Q. When was the date of the first sale?

A. The first sale was in 1947. We have sold them each year since that date.

Q. Are you familiar with an Obee Wholesale Gro-
455 cery Company in Chicago?

A. Yes.

Q. Has your company sold them anything since April, 1951?

A. Yes.

Q. When was the date of the first sale?

A. There was a small sale made in 1953. We again sold them in 1955 and 1956. We have not sold them since then.

Q. In what amount was the '51 sale?

A. It would be less than 500 pounds.

Q. And what amount were the other sales?

A. Well, the largest purchase, I believe, was a thousand pounds, in 1955, or approximately a thousand pounds.

Q. Was there more than one purchase in 1955?

A. I would say so. I couldn't definitely answer that, but I would assume so, if they purchased a thousand pounds.

Q. Are you familiar with the Qualified Products Company?

A. Where are they located?

Q. I don't know, sir.

A. Well, there is a Qualified Food Products in Chicago, and we sold them—yes, we have sold them.

Q. Have you sold them anything since April of 1951?

A. Yes.

Q. When was the date of the first sale?

A. Well, the one and only sale was in 1952.

Q. In what amount?

456 A. Very small. Less than a hundred pounds.

Q. Are you familiar with the Richmond-Chase Company?

A. Yes.

Q. Has your company sold them anything since April of 1951?

A. Yes.

Q. When was the date of the first sale?

A. 1946, that I know of.

Q. Have you sold them continuously since that time, every year?

A. No.

Q. What years did you not sell them?

A. We sold them in 1946, in a fairly substantial amount. We sold them again in 1953.

Q. In what amount was the 1953 sale?

A. About 4,000 pounds.

Q. Have you sold them any since 1953?

A. Yes.

Q. In what amounts and in what years?

A. This year we sold them 9,000 pounds, 1958. In 1957 we sold them less than a thousand pounds. In 1956 we sold them approximately 40,000 pounds. In 1955, approximately 5000 pounds.

Q. Did you make any sales to them in 1954?

A. Yes. I would say it would be about four thousand.

Q. Are you familiar with the John Sexton Com-
457 pany? I believe they are in Chicago and other places as well.

A. Yes.

Q. Have you sold them anything since April of 1951?

A. Yes.

Q. What was the date of the first sale?

A. The first sale that I have knowledge of was in 1946.

Q. And did you sell them from 1946 to 1951?

A. No.

Q. What was the date of the first sale after April of 1951?

A. You are referring to John Sexton, Chicago?

Q. Any location?

A. Any. We have never sold John Sexton in Chicago. We have sold them, we have sold John Sexton in Indianapolis. And the first sale would have been in 1952.

Q. And what about was that sale?

A. It was very small. About 300 pounds.

Q. And what is the extent of sales since that date of first sale?

A. Sales to Indianapolis have increased.

Q. To what point?

A. I would say last year it was approximately 40,000 pounds.

Q. Are you familiar with Smart & Final Company in Los Angeles?

A. Yes.

Q. Have you sold that company anything since April of 1951?

458 A. No.

Q. Are you familiar with the Teasdale Packing Company, in California?

A. Yes.

459 Q. Has your company sold them anything since April of 1951?

A. Yes.

Q. What was the date of the first sale?

A. 1947.

Q. What was the date since April of 1951?

A. 1953.

Q. And what was the amount of that sale?

A. It would have been less than a thousand pounds.

Q. Have you sold them anything since that first sale in 1953?

A. Yes.

Q. When and in what amounts?

A. We have sold them each year since 1953. The amounts would be, oh, maybe, '54 about a thousand pounds, in 1955 about the same; it increased in '56, approximately 1500 pounds. '57 it was larger. I will say that it was up to 7 or 8 thousand pounds.

Q. Are you familiar with the Tri-State Restaurant Supply Company in Chicago?

A. Yes.

Q. Has your company sold them anything since April of 1951?

A. Yes.

Q. What was the date of the first sale?

A. 1955.

Q. What was the amount of that sale?

460 A. About 4 thousand pounds for the year.

Q. You sold them, and have you sold them anything since then?

A. Yes.

Q. In what amount?

A. The annual sales would be about the same.

Q. For each year since 1955?

A. Yes

Q. Are you familiar with the United Grocers in Watsonville, California?

A. Yes.

Q. Has you company sold them anything since April of 1951?

A. No.

Q. Are you familiar with Safeway Stores in Denver, Colorado?

A. Yes.

Q. Has your company sold them anything since April of 1951?

A. No.

Q. During the period April 1, 1951 to the present, what changes, if any, have occurred, or your company has made in their method of pricing?

A. Well, the major change is — was changing from an f.o.b. warehouse price structure in the East to an f.o.b. destination; and, subsequently to an f.o.b. destination and f.o.b. warehouse price structure in the East.

Q. Will you describe the dates in which those changes occurred?

A. It was in 1954 that we went into the f.o.b. des-
461 tination pricing.

Q. How was it before that?

A. F.O.B. our warehouses.

Q. Yes.

A. And in 1955 we had two policies of f.o.b. the warehouse and f.o.b. destination, and that still exists.

Q. Where were those policies?

A. Only in the — repeat your question, please.

Q. Where those two policies inforced? Where were they applicable? What area?

A. East of the Rocky Mountains. Then, we also had on the West Coast, and still do, an f.o.b. delivered price into various areas, and our f.o.b. Vacaville price.

Q. What were the reasons for these changes which you made in your pricing methods which you have described?

A. Well, in the East, we were having a problem in being competitive, and customers were able to buy their merchandise locally, from local warehouses, from locations

from warehouse stocks, either maintained by our competitor at their distributor's warehouse; so, we decided to have an f.o.b. delivered price to meet competitive, to meet the competitive situation.

Q. What competitors do you refer to?

A. This was Gentry, Inc.

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474 San Francisco, California
October 21, 1958

475 PROCEEDINGS

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485 ROBERT SPARLING was thereupon called as a witness for the Commission and, having been previously duly sworn, resumed his testimony as follows:

Cross Examination

By Mr. Walker:

Q. Mr. Sparling, you testified that Basic lost sales to some 24 companies that you named as a result of the relationship between Gentry and Consolidated Foods. Do you recall that testimony?

A. Yes, sir.

Q. To what relationship do you refer, Mr. Sparling?

A. I am referring to the relationship that Consolidated Grocers has by coercive action on the buyer due to the Consolidated Grocers' buying power.

Q. Have you completed your answer?

A. Yes.

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Q. Now, would you please explain what you mean
486 by the words, "coercive action," Mr. Sparling?

A. Consolidated Grocers can inform the buyer that inasmuch as Consolidated Grocers purchases material manufactured by the buyer's company for sale in Consolidated Grocers' outlets, that the buyer is expected to pur-

chase his onion and garlic seasonings from the Gentry Division of Consolidated Grocers.

Q. By "coercive action" do you mean that this is a threat, Mr. Sparling?

A. I would say that it's an implied threat.

Q. An implied threat to discontinue purchasing from that customer unless the customer buys from Gentry; is that what you mean?

A. Yes.

Q. And does this coercive action which you have used to describe the word "relationship" that you used apply to all of these 24 companies that you listed, Mr. Sparling?

A. Yes.

Q. Does your company no longer sell anything to any of these 24 companies?

A. I believe you have a tabulation, Mr. Walker, which shows the record of sales.

Q. I am asking you for your answer based on what your knowledge is, Mr. Sparling.

A. Would you repeat the question, please?

487 Q. The question is: Does Basic no longer sell anything to any of these 24 companies?

A. Basic sells some merchandise to some of these 24 companies.

Q. And does today, is that right?

A. And does today.

Q. So that if these sales figures that you are referring to, Mr. Sparling, were brought up to 1958, it would show that there are still some sales to some of these customers by Basic in 1958, is that right?

A. Yes.

Q. Let's take these companies one at a time now, Mr. Sparling. J. J. Gielow & Sons, where is that company located?

A. Detroit, Michigan.

Q. What is the nature of the business done by that company?

A. They pack pickles, Kosher dills, make relishes.

Q. What sales have you lost to this customer, Mr. Sparling?

A. We have not sold this customer in the years 1954, 1955, 1956, 1957 or 1958 to date.

Q. Are those the lost sales that you refer to?

A. They are.

Q. Are those the sales that you lost that you referred to when you said that you lost sales to this customer as a result of the relationship between Gentry and Consolidated Foods?

488 A. They are.

Q. What are those sales, Mr. Sparling?

A. We had been supplying this firm with material right along up to 1954. We expected to supply them with merchandise in 1954. They indicated they wished to buy from us in 1954.

Q. Let's hold the indications, please, Mr. Sparling. The question was: What are the specific sales that you lost?

* * *

490 By Mr. Walker:

Q. What is the amount of the sales that you lost with this customer in 1954, Mr. Sparling?

A. This would be an estimated figure. 25,000 pounds.

Q. Of onion and garlic?

A. Yes, sir.

Q. And it is your testimony, is it, Mr. Sparling, that you estimate that you lost sales of 25,000 pounds of onion and garlic to this customer in 1954 because of the relationship between Gentry and Consolidated, as you have described it?

A. Yes.

Q. And if I understand your testimony correctly, Mr. Sparling, you—well, let me ask you the question.

Upon what do you base that amount, this estimate of the amount, at 25,000 pounds?

A. This firm had been buying regularly from us. If
491 you will note, in 1952 they used 25,000 pounds. In 1953 they used 20,000 pounds. When speaking of canning operations for processing, there is always the possibility of lack of material from the field, which can reduce things, or an overpack.

I would guess or estimate that in 1952 there might have been a slight overpack, and in 1953 was possibly a short pack. In 1954, if the cucumbers were available, would probably be up to 1952's pack because of increased growth in population and increased distribution of their products.

Q. You never sold this customer as much as 20,000 pounds in any year prior to 1952, did you?

A. No, they were a growing firm.

Q. Excuse me, please, Mr. Sparling. I didn't ask you for an explanation. I asked you for a yes or no answer.

A. No.

Q. Will you please stop after the answer.

Now, upon what, Mr. Sparling, do you base your opinion, that you lost the sales of this company to Gentry?

A. Upon a call report or a sales report, as we refer to them, issued by our salesmen after calling on that firm.

Q. And when did you receive this call report or sales report, Mr. Sparling?

A. In March of 1954.

Q. And who was the salesman that sent the call report or letter?

492 A. William White.

Q. And what did he say, to the best of—well, excuse me. You saw this call report in March, 1954?

A. Yes, sir.

Q. What did he say in this call report?

A. He, of course, approached Mr. Gielow for his busi-

ness, pickle purchases, or rather, the pickle production to be starting shortly in their plant in the south. Mr. Gielow informed Mr. White that he would not be buying from Basic.

Naturally the salesman asked him why. He said that he had been supplying Consolidated Grocers with pickles and the Gentry salesman knew of this, and he had also had contacts—Mr. Gielow this is—from officials of Consolidated Grocers, suggesting that Mr. Gielow use Gentry onion and garlic.

Our salesman naturally recommended a small purchase from Gentry and the balance from us. Mr. Gielow told our representative that Gentry was well aware of the number of cases that Consolidated Grocers intended to buy from him and would know the quantity of onion and garlic that he would require.

Our salesman then suggested that he continue buying from Basic and not to jeopardize quality. Mr. Gielow said he could not buy from us.

Q. Have you finished?

A. Yes, sir.

Q. Have you ever talked to Mr. Gielow about this?

493 A. No.

Q. Then all of your information about this is based upon what you read in this call report to which you referred?

A. Yes.

Mr. Walker: Your Honor, at this time I will move to strike all of this witness' testimony about J. J. Gielow & Sons.

We have the situation here where this witness has admitted that his statements about this company are based upon what he read in a call report sent to him by a salesman who is not present in the courtroom, in the course of which the salesman reported what Mr. Gielow said to him; and,

even further than that, reported what Mr. Gielow said that some unnamed person at Consolidated said to him.

I think this is unreliable hearsay testimony at its very worst, Your Honor, and should not be permitted to stand in this record.

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496 Hearing Examiner Kolb: I think had the call report been offered in evidence in the case in chief by this man who is the sales manager or vice-president in charge of sales, I believe it would have been received as admissible evidence. Therefore, your bringing it out on cross-examination would not change that situation, and I think it is still competent evidence.

Mr. Walker: May we have produced this call report, Your Honor?

Hearing Examiner Kolb: You can ask the witness if he has got it and if he does, if he will produce it.

By Mr. Walker:

Q. Do you have this call report?

A. Yes, sir.

Q. Do you have it with you?

A. Yes, sir.

497 Q. May I see it, please?

Mr. Hays: Would you like all the call reports that we have?

Mr. Walker: Yes, I would.

Mr. Hays: That form a basis for this testimony, that is?

Mr. Walker: Any call reports that relate to this area of the testimony.

Mr. Hays: Let the record show that Mr. Sparling is handing to Mr. Walker the call report.

Mr. Walker: Do I understand that the objection was overruled, Your Honor?

Hearing Examiner Kolb: Objection overruled.

Mr. Walker: Without presuming too much, Your Honor, I would like to renew the objection by moving to strike that portion of the witness' testimony that purports to repeat

what this unidentified official at Consolidated said to Mr. Gielow because I think that goes way beyond—

Hearing Examiner Kolb: You brought that out on cross-examination as being the substance of the report. Now, if the report differs from that, you can bring that out. The objection is overruled.

Mr. Hays: Are you through examining the call report, Mr. Walker?

Mr. Walker: No.

498 By Mr. Walker:

Q. Now, Mr. Sparling, you mentioned the Joseph De Frates Company. Where is that company located?

A. Springfield, Illinois.

Q. What business is the company engaged in?

A. They make a chili item, a chili con carne item, and can it. They also do some jobbing to the institutional market.

Q. You never sold this customer anything before 1953, is that right?

A. Correct.

Q. And you sold this customer more in 1956 than you had ever sold them before, is that correct?

A. Correct.

Q. Do they sell their products to Consolidated Foods Corporation?

A. I cannot answer that question.

Q. You don't know?

A. I do not know.

Q. Where is the Venice Maid Company located, Mr. Sparling?

A. Vineland, New Jersey.

Q. What business is that company engaged in?

A. They are a canner with the main items they make of spaghetti sauce.

499 Q. To your knowledge, did Venice Maid Company ever use raw onion or garlic?

A. Yes.

Q. And they converted, at least in part, to the use of the dehydrated product?

A. Yes.

Q. When did that change take place? Do you know, Mr. Sparling?

A. The last time they converted to dehydrated product was in 1956.

Q. When was the first time they converted to the dehydrated product?

A. They were using the dehydrated product in 1949, and they have used small quantities of dehydrated onion and garlic all along the period from 1949 through 1956.

Q. And they have also used the raw product?

A. Correct.

Q. During the same period?

A. Correct.

Q. In varying amounts?

A. I don't know their production figures.

Q. Where is Moore & Co. located?

A. New York.

Q. What do they make, Mr. Sparling?

A. Soups.

500 Q. What kind of soups?

A. One of them is an onion soup. Various lines of soups.

Q. They are mostly what you might call gourmet soups, aren't they?

A. Correct.

Q. Lobster soup, crab soup, wine soups; they make those, don't they?

A. I am not familiar with their entire line. I know they have an onion soup.

Q. Do you know whether Moore & Co. has sold any product to Consolidated Foods Corporation?

A. I have a call report—

Q. Just please answer the question yes or no.

A. Yes.

Q. You do know?

A. Yes.

Q. What do they sell to Consolidated Foods Corporation?

A. Soup.

Q. Your sales to this customer, Moore & Co., prior to 1953, were quite small, weren't they?

A. Right.

Q. Your larger sales to this customer were in 1954; is that right, Mr. Sparling?

A. That is correct.

Q. And you had substantial sales in 1953, 1954, 501 1955, 1956, and 1957; is that right?

A. That is right.

Q. Your sales in 1956 were larger than they were in 1955; is that right?

A. That is right.

Q. Your sales in 1957 were larger than they were in 1955; is that right?

A. That's correct.

Q. You never sold the Rival Packing Company prior to 1953; is that right, Mr. Sparling?

A. That is right.

Q. Your larger sales to this account were in 1955; is that right?

A. Right.

Q. Turning to Armour & Co., Mr. Sparling, your sales to this company were at their highest in 1955; is that right?

A. That is right.

Q. And your sales in all the years 1951 through 1957 were greater than any of the years prior to 1951; is that right?

A. Will you repeat the question again?

Mr. Walker: Read it, please.

(Question read.)

The Witness: That is correct.

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502 By Mr. Walker:

Q. You never sold Blue Seal Foods prior to 1951, did you?

A. I can't answer that.

Q. Did you sell them in 1949 or 1950?

A. We did not sell them in 1949 or 1950.

503 Q. Does this company sell anything to Consolidated Foods Corporation, Mr. Sparling?

A. Yes.

Q. What do they sell?

A. They make salad dressing.

Q. Is that what they sell to Consolidated Foods Corporation?

A. Yes.

Q. The Oscar Mayer Company in Madison, Wisconsin, do you sell this company at Madison, Mr. Sparling?

A. Yes.

Q. Did you sell them elsewhere?

A. Yes.

Q. Are these sales that you have here only those at Madison, or do they include sales in places other than at Madison to Oscar Mayer?

A. These sales are for deliveries to Madison.

Q. So that this is not a complete statement of all your sales to the Oscar Mayer Co.; is that right?

A. That is correct.

Q. You have sold more than is shown on this schedule; is that right?

A. We have sold more to Oscar Mayer and Company.

Q. Now, your sales to Oscar Mayer, as shown on the

data that you are looking at, Mr. Sparling, were greater in 1957 and 1955 than any prior years; is that right?

504 A. Read the question, please.

Mr. Walker: Read it, please.

(Question read.)

The Witness: That is correct.

By Mr. Walker:

Q. Now, you have sold George A. Hormel & Co. more in each year since 1951 than you did in either of the years 1949 and 1950; is that right?

A. That is correct.

Q. Where are these sales to George A. Hormel & Co. that are shown here?

A. Austin, Minnesota.

Q. Do you sell George A. Hormel elsewhere?

A. We do.

Q. And those sales aren't shown here; is that right?

A. That is correct.

Q. The George A. Hormel Co. buys at Atlanta, Georgia; is that right?

A. I cannot say.

Q. Do they buy at Birmingham, Alabama?

A. I cannot say.

Q. Do they buy at Dallas, Texas?

A. Yes.

Q. Do they buy at Montgomery, Alabama?

A. I cannot say.

505 Q. Do they buy at San Antonio, Texas?

A. Yes.

Q. Do they buy at San Francisco, California?

A. Yes.

Q. Do they buy at Houston, Texas?

A. I cannot say.

Q. Have you sold Hormel at any of these locations that I have mentioned?

A. Yes.

Q. And none of these sales are shown on this schedule; is that right?

A. That is correct.

Q. Now, the Olympia Mushroom Company, that's a part of the Michigan Mushroom Company, isn't it?

A. Yes.

Q. It is a division, isn't it?

A. Yes.

Q. It is not a separate company, is it, Mr. Sparling?

A. It is a division.

Q. The same thing is true of Aurora Frozen Foods, is it not?

A. Correct.

Q. The same thing is true of the Indiana Mushroom Company, is it not?

A. Correct.

Q. They are all divisions of the Michigan Mushroom Company?

506 A. You are right.

Q. What business is Woolson Spice Company engaged in?

A. The Woolson Spice Company is engaged in a typical spice business, retail packaging, private label packaging for consumer packages and also selling to the institutional market, spices in institutional packages.

Q. They are distributors—excuse me, were you finished?

A. No. They also sell bulk merchandise and function as a distributor.

Q. They function as a distributor as to the products that are made by Gentry and Basic, is that right? Have they ever distributed your products?

A. Yes.

Q. To your knowledge, have they ever distributed Gentry's products?

A. Yes.

Q. You sold Woolson Spice Company more in 1955 than you have sold them in any prior year, is that right?

A. That is correct.

Q. Did you ever sell the Indiana Mushroom Company, a division of the Michigan Mushroom Company, prior to 1952?

A. No.

Q. You had sold them in every year from 1952 through 1957, is that right?

A. That is correct.

507 Q. And the largest sales were in 1956 and 1957, is that right?

A. Correct.

Q. Did you sell Bedford Food Products anything prior to 1953?

A. No.

Q. To your knowledge, did Bedford Food Products buy anything from Gentry in 1953?

A. Yes.

Q. To your knowledge, did Bedford Food Products buy anything from Gentry in 1955?

A. I can't answer.

Q. To your knowledge, did Bedford Food Products buy anything from Gentry in 1957?

A. I can't answer.

Q. Now, you sold Gerber Products more in 1952 and 1956 than in any other year prior to 1956, is that right?

A. We sold Gerber Products, Fremont, Michigan, more in 1952 and 1956 than in any prior year.

Q. You sell Gerber elsewhere, Mr. Sparling?

A. Yes.

Q. The same company?

A. Yes.

Q. And those figures are not shown here?

A. That is right, yes.

Q. Do you sell Gerber at Rochester, New York?

508 A. Yes.

Q. Do you sell them at San Leandro, California?

A. They are in Oakland.

Q. Do you sell them in Oakland?

A. Yes.

Q. But you did not include those figures?

A. No.

Q. You sold the Lake Odessa Canning Company more in 1954 and 1955 than in any prior year, is that right?

A. That is correct.

Q. Do you know whether the Lake Odessa Canning Company has any relationship with the Woolson Spice Company?

A. You'd have to qualify "relationship."

Q. Have they ever purchased from Woolson Spice Company?

A. Yes.

Q. Have they ever purchased your products from Woolson Spice Company?

A. Not that I know of.

Q. Have they ever purchased Gentry's products from Woolson Spice Company?

A. I can't say.

Q. By the way, Mr. Sparling, on this J. J. Gielow and Sons, where do you sell them?

A. We don't sell them.

Q. Where did you sell them in 1939 to 1953?

509 A. In Detroit, Michigan.

Q. Are you familiar with the Adelle Pickle Company in Adelle, Georgia?

A. I am.

Q. Are they a part of J. J. Gielow and Sons?

A. They were.

Q. Did you ever sell them?

A. We did.

Q. Do you now?

A. We do not.

Q. When did you last sell them?

A. 1953.

Q. To your knowledge, Mr. Sparling, did Gentry sell Les Pommiers anything in 1953?

A. I do not know.

Q. To your knowledge, did Gentry ever sell any products between 1949 and 1957 to the Gerber Company?

A. Yes.

Q. Did they sell them in 1953?

A. I do not know.

Q. Do you know what years they did sell them in?

A. I do, one year, anyway.

Q. What year?

A. 1954.

Q. Was that the only year you know of that they sold them?

510 A. That's the only year that I have specific information of them selling.

Q. But that is a customer that you have stated under oath that Gentry took away from Basic, is that right?

A. Will you repeat the question?

Q. Strike the question.

Does the P. J. Ritter and Company use dehydrated garlic, Mr. Sparling?

A. Yes.

Q. You have sold them dehydrated garlic in every year since 1949 up to 1957, is that right?

A. That is correct.

Q. Has that company ever purchased any dehydrated garlic from Gentry?

A. I cannot say.

Q. You don't know?

A. I do not know.

Q. Do you know whether this company purchased any dehydrated onion from Gentry?

A. Yes.

Q. Has Gentry ever sold dehydrated onion and garlic to Oscar Mayer?

A. I do not know.

Q. You don't know?

A. I do not know.

511 Q. And yet this is another one of those companies that you say you lost to Gentry because of the Consolidated Foods relationships, is that right?

Mr. Hays: He did not say that. I object to that. He gave an opinion upon—and Mr. Walker has never gotten around to the basis of that opinion. He did not say that, and I object to the characterization.

Mr. Walker: Strike the question.

• • •

By Mr. Walker:

Q. Mr. Sparling, Basic didn't make any sales of either dehydrated onion or dehydrated garlic to J. L. Read Foods in 1949, 1950, 1951 or 1952; is that right?

A. That is correct.

Q. And commencing in 1953, Basic sales of dehydrated onion and garlic to J. L. Read Foods have increased each year from 1953 through 1957; is that right?

A. That is correct.

Q. Where do you sell J. L. Read Foods, Mr. Sparling?

A. Streator, Illinois.

Q. Do you also sell them in Nashville, Tennessee?

512 A. You will have to explain more what you mean by the word "sell."

Q. Do you sell—Are any of your products sold to J. L. Read Foods for use at their plant at Nashville, Tennessee?

A. We have delivered merchandise to Nashville.

Q. And you did not sell it to J. L. Read Foods?

A. We sold it to J. L. Read Foods.

Q. Are those sales included in these figures here?

A. They are.

Q. Where do you sell Armour and Company, Mr. Sparling?

A. Chicago.

Q. Do you sell them at all in San Francisco?

A. To the best of my knowledge, I cannot recall a shipment to Armour in San Francisco.

Q. Do you sell them in Jacksonville, Florida?

A. I can't answer that,

Q. You don't know; is that right?

A. I do not know, no.

Q. You might have?

A. We might have.

Q. Do you sell them in Los Angeles, California?

A. I do not know.

Q. Do you sell them in Portland, Oregon?

A. I do not know.

Q. Do you sell them in Spokane, Washington?

513 A. I do not know.

Q. Do you sell them in Newark, New Jersey?

A. You are considering the whole period?

Q. Yes.

A. I do not know.

Q. Do you know whether the sales figures that you have here for Armour and Company would include sales to all of these cities that I have mentioned?

A. Had we made sales to any of those cities which you mentioned, they would be included.

Q. They would be included in these figures?

A. Yes.

Q. Now, Mr. Sparling, these are the 24 companies that you claim Basic lost sales with because of the relationship

between Gentry and Consolidated Foods, is that right?

Mr. Hays: Objection, Your Honor. I think it will confuse the witness to say "claim." I just want the record to show that he has given an opinion as to his loss of sales by virtue of the Gentry relationship. Now, several of Mr. Walker's previous questions, which he struck on his own motion, said, "You lost these sales."

This witness' testimony was only as to that opinion, Your Honor. We can support that opinion on redirect, but I don't want the record to get into the area of showing something that the witness has not testified to on direct. He will
514 make no attempt to testify to it on cross-examination.

Mr. Walker: I will withdraw the question.

By Mr. Walker:

Q. Now, Mr. Sparling, you have testified that in your opinion Basic Vegetable Products Company lost dehydrated onion or dehydrated garlic sales with these 24 customers as a result of their relationship between Gentry and Consolidated since April 1, 1951. Is that correct?

A. Yes.

Q. Mr. Sparling, do you know of your own personal knowledge that as to all of these customers the sales that in your opinion were lost by Basic were gained by Gentry?

The Witness: Will you repeat the question, please?

(Question read.)

The Witness: Would you repeat it again, please?

(Question read.)

The Witness: No.

By Mr. Walker:

Q. Mr. Sparling, does Basic sell any of its products through distributors?

A. Yes.

Q. Have your products ever been sold to any users by the Heinz Company?

A. Will you qualify "users"?

Q. By "users," any customer, any company, which
515 purchases your products.

A. Will you repeat the question, please?

(Question read.)

The Witness: Yes.

By Mr. Walker:

Q. When was that, Mr. Sparling?

A. When this first started?

Q. Yes.

A. To the best of my knowledge, it was either in 1945 or '46.

Q. Were your products sold by the Heinz Company at any time during the nineteen—at any time during the period from 1950 through 1957?

A. To users? Yes.

Q. In each of those years?

A. 1953 through—

Q. 1950 through 1957.

A. Yes.

Q. Heinz was distributing your products; is that right?

A. Heinz was distributing two products.

Q. Two of your products?

A. Yes.

Q. Do you know of any instances, Mr. Sparling, where any purchasers of Basic's products stopped purchasing from—stopped purchasing those products because Heinz was distributing your products?

516 Mr. Hays: Objection. No relevancy to this proceeding.

Hearing Examiner Kolb: Objection overruled.

The Witness: Repeat the question.

(Question read.)

The Witness: Stopped purchasing those products from whom?

By Mr. Walker:

Q. From anyone, sir.

A. From anyone because Heinz was distributing those products?

Q. Was distributing any of your products. Do you understand the question, sir?

A. Yes. I don't know of anyone that stopped buying because Heinz was distributing our products.

Q. Or to put the question in your words that you have used, Mr. Sparling, do you know of any company that has stopped buying Basic's products because of the relationship existing between Basic and Heinz?

Mr. Hays: I object. There is no relevancy here. There is no foundation laid.

Hearing Examiner Kolb: That's the same question you asked before, is it not?

Mr. Walker: I just want to make sure the witness understands the question, and I am not sure he does, Your Honor.

I think if he can answer this question, why—

517 The Witness: Repeat the question again.

(Question read.)

The Witness: To the best of my knowledge, I cannot think of anyone.

By Mr. Walker:

Q. You acquire customers from time to time as a regular practice, don't you, Mr. Sparling?

A. Yes.

Q. You also lose customers from time to time as a general practice, don't you?

A. We have.

Q. And you lose those customers for a variety of reasons; isn't that right, Mr. Sparling?

A. A few reasons.

Q. Did you ever lose a sale because a competitor quoted a lower price for the product?

A. Yes.

Q. Have you ever lost any sales to the Puccinelli Packing Company?

A. Yes.

Q. Approximately how many customers did Basic have in 1951, sir?

A. About 600.

Q. About how many customers did Basic have in 1954?

A. About the same. Perhaps 625, 650. These are estimates.

518 Q. I expect that. And in 1957?

A. Again this is an estimate. About 650.

Q. Basic has acquired some new customers since April 1, 1951, have they not, Mr. Sparling?

A. Yes.

Q. Mr. Sparling, did Basic make any sales for the first time after April, 1951, to a company that formerly bought from Gentry?

The Witness: Will you repeat the question?

(Question read.)

The Witness: Yes.

By Mr. Walker:

Q. And there were also companies, were there not, Mr. Sparling, that you sold in the years—say, 1946 and 1947—and then did not sell for a period of time and commenced selling after 1951, or resumed selling after 1951, is that right?

A. I can think offhand of one.

Q. What is that one?

A. Richmond Chase Canning Company.

Q. What about the John Sexton Company?

A. We sold John Sexton prior to 1951 in Chicago, and we sold John Sexton in Indianapolis after 1951.

Q. Was there a gap, a period of time in there when you did not sell them at all?

519 A. Yes.

Q. Would that be true also of the Teasdale Packing Company?

A. To the best of my knowledge, we did not sell Teasdale Packing Company prior to 1951.

Q. Mr. Sparling, I would like to read you your testimony of yesterday about the Teasdale Packing Company. I quote from page 458:

"Q. Are you familiar with the Teasdale Packing Company in California?

"A. Yes.

"Q. Has your company sold them anything since April of 1951?

"A. Yes.

"Q. What was the date of the first sale?

"A. 1947."

Do you wish now to change that testimony, Mr. Sparling?

A. Will you repeat it again?

Q. The material question, Mr. Sparling, is, and I quote from page 459:

"Q. What was the date of the first sale?

"A. 1947."

A. I would say the testimony should be changed.

Q. What is your testimony now as to when you first sold the Teasdale Packing Company?

A. 1952.

520 Q. Now, you have testified, Mr. Sparling, that there are companies that you first sold after April 1, 1951, that formerly bought from Gentry. To your knowledge, Mr. Sparling, your personal knowledge, did any of these customers stop buying from Gentry as a result of Gentry's relationship with Consolidated Foods?

A. To my personal knowledge, did any of these customers stop buying from Gentry because of Gentry's relationship with Consolidated Foods?

Q. That's right.

A. One.

Q. Which one is that, sir?

A. Teasdale Packing Company.

Q. And is that the only one?

A. To my personal knowledge, that is the only one I can recall.

Q. How do you know that, Mr. Sparling?

A. I was told at Teasdale myself.

Q. And who told you that, please?

A. A Mr. Berry.

Q. Then you do know that Gentry has lost some sales as a result of his relationship with Consolidated; is that right?

A. Yes. I know of one.

Q. Did you ever hear of the Witwer Grocery Company?

A. Yes.

521 Q. Does your company sell anything to the Witwer Grocery Company?

A. They sold the Witwer Grocery Company in 1956.

Q. Who did they buy from before that, if you know, Mr. Sparling?

A. Yesterday I was asked that question.

Q. I believe not, sir.

A. From knowledge that I have received, they purchased from Gentry.

Q. So you took this customer away from Gentry; is that right?

A. The customer decided to buy from us.

Q. Frank Bros. is another company that you first sold after 1951, isn't it?

A. That is correct.

Q. Did they purchase anything from Gentry before the time that you first sold them?

A. I do not know. To my personal knowledge I do not know.

Q. Do you know why the Witwer Grocery Company started buying from Basic?

A. I do not.

Q. They might have stopped buying from Gentry because of the Consolidated relationships; isn't that right?

Mr. Hays: Objection. It has no probative force.

Hearing Examiner Kolb: Cross-examination. Objection overruled.

522 The Witness: Repeat the question, please.

(Question read.)

The Witness: It would be possible.

By Mr. Walker:

Q. You first sold to Herschel Canning Company after 1951; is that right?

A. Yes.

Q. Did they purchase anything from Gentry before you sold them?

A. From information I have received, they have.

Q. Did Gentry lose sales to you with Herschel Canning Co.?

A. I do not know.

Q. You first purchased from Kothe, Wells & Bauer after 1951—you first sold them—I am sorry—Kothe, Wells & Bauer after 1951?

A. That is correct.

Q. Did they purchase from Gentry prior to the time that you first sold them?

A. According to information I have received, they did.

Q. Have they lost sales to Basic with this customer?

A. Has Gentry lost sales to Basic with this customer?

Q. Yes.

A. I do not know.

Q. You first sold the Obee Wholesale Grocery Company, after 1951; is that right?

523 A. Yes.

Q. Did they purchase from Gentry prior to the time that you sold them?

A. I have been informed they did purchase from Gentry prior to the time we sold them.

Q. Then as to the Obee Wholesale Grocery Company, Gentry lost the sales to Basic; is that right?

A. I do not know if Gentry lost sales to Basic.

Q. Let's use your language, Mr. Sparling. In your opinion, did the Obee Wholesale Grocery Company—did Gentry lose sales with that company to Basic?

A. In my opinion, inasmuch as I have been informed that Gentry was selling this firm and that we sold them after 1953, it would be my opinion that Gentry lost sales to Basic.

Q. Would that opinion also be true of Kothe, Wells & Bauer?

A. Inasmuch as I have been informed that Kothe, Wells & Bauer formerly bought from Gentry, and we have now made a sale to that firm, it would appear that Gentry lost the sale to Basic.

Q. Would that opinion be true of the Richmond Chase Canning Company?

A. Yes.

Q. Do you know whether or not Gentry sold Richmond Chase Company in the period between 1946 and 1953?

A. I have been told that Gentry has sold to the Richmond Chase Canning Company.

Q. During that period?

A. Yes.

524 Q. And you first saw them in 1953, after 1946, is that right?

A. That is right.

Q. Do you have an opinion as to whether or not Gentry has sold sales with John Sexton Company to Basic?

A. I have been informed that Gentry sold John Sexton Company prior to 1951, but I do not know where Gentry sold John Sexton Company prior to 1951. All of our sales

since 1951 have been to John Sexton Company at Indianapolis, Indiana, and prior to 1951, John Sexton Company did not have a plant at Indianapolis, Indiana.

Q. Now, yesterday you testified, Mr. Sparling, that you first sold the Tri-State Restaurant Supply Company in 1955. Do you wish to change that testimony now?

A. Apparently we made a sale to them in 1954, and I was in error.

* * *

526 ROBERT SPARLING resumed the stand and testified further as follows:

Cross Examination (continued)

By Mr. Walker:

Q. Mr. Sparling, were you ever told by anyone, orally or in writing, of any instance where Basic gained sales or Gentry lost the sales because of the Gentry-Consolidated Foods relationship?

A. Yes.

Q. Who told you that, Mr. Sparling?

A. Mr. Berry at Teasdale, the packing company.

Q. And was that the one that you, I believe, referred to this morning where you said that someone at Teasdale—that Mr. Berry at Teasdale told you this personally?

A. Yes.

Q. Do you know of any other instances of that type, Mr. Sparling?

A. I do not recall any others.

Q. Do you ever recall seeing any call reports or letters or sales reports of any kind from any of your salesmen

527 in which they mentioned the possibility of Basic gaining sales or Gentry losing sales because of the Consolidated Foods-Gentry relationship?

A. I don't recall any. I don't recall any.

Q. Did you ever discuss the Gentry-Consolidated Foods relationship with any of your salesmen, Mr. Sparling?

A. Well, yes, we have—I have.

Q. On numerous occasions?

A. Yes.

Q. Did you ever discuss it with Mr. William White?

A. Yes.

Q. Did you ever say to any of your salesmen that they should try to sell companies who compete with Consolidated Foods by mentioning to them Gentry's relationship with Consolidated Foods?

A. I don't recall it.

Q. You might have, is that right?

A. I have been trying to search my mind and go over this. I do not recall it.

Q. You do not recall ever saying that to Mr. William White?

A. I don't recall it.

Q. Do you ever recall discussing with any of your salesmen, Mr. Sparling, companies who were actual or potential customers of Basic who were also competitors of Consolidated Foods?

The Witness: Would you repeat the question?

528 (Question read.)

A. I have discussed with our salesmen customers or potential customers of Basic that I assume would be competitors of Consolidated Grocers.

Q. In the course of those discussions, did either you or the salesmen or any of them mention that the customers or potential customers were competitors of Consolidated?

The Witness: Repeat the question.

(Question read.)

A. I should imagine that would have been mentioned.

Q. In your opinion, Mr. Sparling, would a competitor

of Consolidated be likely to purchase dried food seasonings from Gentry?

A. Yes.

Q. But you do not recall any discussion, any specific discussion in any of these areas that I have mentioned, with Mr. William White; is that right?

A. No.

Q. Basic sales of dehydrated onion and garlic have increased since 1950, is that right, Mr. Sparling?

A. Up to the present time?

Q. Yes.

A. Yes.

Q. Total sales of dehydrated onion and garlic in the United States have increased steadily since 1950; is 529 that right, Mr. Sparling?

A. I have not seen the figures on total sales. I don't feel qualified to answer that.

Q. Do you have an opinion as to whether total sales of dehydrated onion and garlic in the United States have increased steadily since 1950?

A. I would say that total sales have increased since 1950 fairly steadily.

Q. Well, there has been a steadily increased market for dehydrated onion and garlic since 1950, hasn't there been, Mr. Sparling?

A. There has been an increasing market, yes.

Q. And there has been an increasing demand for dehydrated onion and garlic products since 1950; isn't that right?

A. Yes.

Q. And it's true, Mr. Sparling, isn't it, that more food manufacturers are using dehydrated onion and garlic today than there were in 1950?

A. We have had a slight gain in number of accounts, yes.

Mr. Walker: Would you read the question back, please?

(Question read.)

A. Yes.

By Mr. Walker:

Q. Now, Mr. Sparling, hasn't Basic increased its facilities since 1950 to meet this greater demand that you
530 just testified about?

A. By increased facilities, you are thinking of physical plant?

Q. Any facilities?

A. Yes.

Q. Doesn't this increased demand, about which you have testified, Mr. Sparling, require more salesmen to be used by Basic?

A. No. The increased demand itself does not require more salesmen by Basic.

Q. Doesn't this increased demand, about which you have testified, require that Basic have warehouse space in more places?

A. No. The increased demand did not cause Basic to have more warehouses.

Q. Mr. Sparling, is it not a fact that Basic salesmen were urged to point out to purchasers or potential purchasers of Basic's products who were competitors of Consolidated that they would be assisting Consolidated if they bought from Gentry?

The Witness: Repeat the question.

(Question read.)

The Witness: Repeat it again.

(Question read.)

A. Any type of purchaser?

Q. That is right.

A. I do not recall that.

531 Q. Mr. Sparling, where you say that to your knowledge none of your salesmen ever stated to a customer or potential customer who was a competitor of Consolidated

that they would be assisting Consolidated if they bought from Gentry?

A. I could not say that none of my salesmen ever made that statement.

Q. Do you know of any instance where any of your salesmen ever made that statement, or words to that effect?

A. No, I don't know of any instances or can't recall any instances,

Q. Has Basic installed any new plant equipment at Vacaville since 1950?

A. Yes.

Q. What was that equipment, Mr. Sparling?

A. Well, I am not a plant man. They have installed some new equipment for brooding and topping, to do a better job in that angle of production. We made a change in the mill to improve the quality of the product. We are making some changes in our garlic production, moving the plant to King City. There was a change in the scraping and a change in the secondary dehydration.

Q. Is that all, sir?

A. From 1950 that's all that I can recall.

Q. What is the nature of the change in secondary dehydration, Mr. Sparling?

532 A. In the secondary driers there were some tunnel changes made. There was additional tunnels put in.

Q. Were any of these changes that you have described, Mr. Sparling, for the purpose of increasing your production?

A. Well, our production has increased, and I am sure that some of them were made with that purpose in mind.

Q. Did you say that you moved to or did something about a plant at King City?

A. Yes.

Q. Was that a new plant, sir?

A. We are moving our garlic operation to King City.

Q. And are you building a new plant for the purpose of handling the garlic operation at King City?

A. Yes. There is a new plant being built.

Q. Is it built now?

A. It's pretty close to completed, yes.

Q. What is the cost of that plant, Mr. Sparling?

A. I don't handle that. That I can't answer.

Q. You have no idea?

A. It's not in my realm at all.

Q. You have no idea?

A. No.

Q. You wouldn't know whether it was more than $100,000?

A. Well, I would say it was more than $100,000.

Q. More than $200,000?

533 A. I have only seen the plant from the outside, and I do not feel qualified to answer.

Q. You don't know whether it was more than $200,000?

A. No. I do not know how much it cost.

Q. Has Basic improved the quality of its product any since 1951?

A. We think it has.

Q. Was this done for competitive reasons?

A. We are always trying to improve our product to be—stay ahead of competition and to make it a better product to replace raw vegetables.

Q. Do you believe that you have improved the quality of service that you have given your customers since 1951?

A. I'd say yes.

Q. And this also was for competitive reasons?

A. Yes.

Q. You have testified, Mr. Sparling, that the competition in dehydrated onion and garlic manifested by Gentry has increased. Do you recall that testimony?

A. Yes.

Q. When did this occur, Mr. Sparling?

A. Well, it's hard to give a definite date. In the last few years, competition has been more keen.

Q. Well, approximately when would you place the commencement of this more keen competition that you have referred to?

534 A. It seems to me the year 1952 or thereabouts.

Q. What form did that take, Mr. Sparling?

A. We had additional competition and the fact that we had this problem that we referred to from the Consolidated Grocers. We realized to hold our position that we were going to have to do a strong merchandising job.

Q. Excuse me, Mr. Sparling, I do not wish to interrupt you, but I would like to have you answer the question and just the question that was asked.

Will you read the question, please?

(Question read.)

By Mr. Walker:

Q. So that you will understand that question, I am not asking you at all what Basic did. I am only asking you what form this increased competition or more keen competition took?

A. The competition began to sell quite extensively through distributors. I am covering a broad period now, while we were not using distributors nearly as extensively. This brought on quite a warehouse problem which had to be met by opening warehouses.

Q. Again, Mr. Sparling, I am not asking you what you did. I only want to know what this keener competition was.

A. The competition seemed to be making much more calls than before, as previously mentioned aggressive sales efforts through the distributors. Their salesmen were

535 doing a much more efficient job.

That's all I can think of right now.

Q. Would you say that those are all of the ways in which

this increased competition manifested itself?

A. All I can recall now.

Q. You don't know of any others?

A. We had this freight problem, delivered shipments.

Q. Is that the f.o.b. pricing problem that you referred to yesterday?

A. Yes.

Q. Any others?

A. That's all I can think of.

Q. Mr. Sparling, wasn't Gentry in vigorous competition with Basic prior to April 1, 1951?

A. I wouldn't call it vigorous.

Q. You wouldn't?

A. No.

Q. Would you say that you were in vigorous competition with Gentry prior to April 1, 1951?

A. I still wouldn't call it vigorous.

Q. Was Basic in vigorous competition with Puccinelli Packing Company prior to 1951?

A. No, I don't think it was vigorous.

Q. Has it been vigorous since 1951?

A. Since 1951 the competition has been much more severe.

536 Q. This is true throughout this onion and garlic dehydrating industry, is that right?

A. I'd say so.

Q. The vigor of the competition in the onion and garlic dehydrating business has, in your opinion, increased since 1951, is that right?

A. It has become more intensified.

Q. Has it increased?

A. You could say it has increased.

Q. It has increased?

A. Yes.

Q. All during this period that was an expanding market,

is that right, Mr. Sparling?

A. There has been a growth during this period.

Q. Substantial growth, isn't that right, Mr. Sparling?

A. That depends upon how you interpret the word "substantial."

Q. Well, you characterize the growth in your own words that has existed in this market since World War II?

A. There's been a steady, healthy growth, but I don't think it would be something substantial.

Q. Now, you testified, Mr. Sparling, that Basic seems to be losing business with old buyers. Do you recall that testimony?

A. Yes.

Q. What are old buyers?

A. We consider customers that have bought with us 537 for a good number of years as an old buyer.

Q. How many years, Mr. Sparling?

A. Well, to me an old buyer is one who has been buying with us for four or five years.

Q. One who has been buying for less than four years would not be an old buyer, in your terminology?

A. It would be more current, yes.

Q. And one who has been buying for longer than five years would still be an old buyer; is that right?

A. Yes.

Q. Who are these old buyers that Basic seems to be losing business with?

A. Do you wish me to name names?

Q. If you can.

A. J. J. Gielow & Son, Venice Maid Company, Armour & Company, Blue Seal Foods, Blue Points, Les Pommiers, P. J. Ritter Company, Olympia Mushroom, Woolson Spice Company, Michigan Mushroom, Aurora Frozen Foods, Indiana Mushroom Company, Gerber Products, Fremont,

Lake Odessa Canning Company, Wass Foods, College Inn, and F. M. Wilson Canning Company.

Q. Is that all?

A. There are some others whom we have had a loss of business with.

Q. How many others?

A. I can't say offhand.

538 Q. Could you make an estimate?

A. There might be as many as 35.

Q. 35 in addition to the 15 that you have named here; is that right?

A. Yes.

Q. Now, you have given us your opinion, Mr. Sparling, as to why Basic lost business with 15 of these companies?

A. Yes.

Q. Would you please give us your opinion as to why Basic lost business with the other 35?

A. You want that opinion?

Q. Yes, sir. If you can be more precise than an opinion, I would appreciate that.

A. There are cases that I know where, in my opinion, this could be due to the Consolidated-Gentry connection. I can think of an instance where the Gentry salesman has been, in my opinion, preferred. We have lost business on the f.o.b. point, lost sales on the f.o.b. point. Would it be possible to review the reasons that I stipulated to you? I am trying to think of these two accounts, and it makes it helpful to answer them.

Q. You are trying to think of what?

A. I am trying to tie these reasons in to different accounts.

Q. What do you want to review?

A. The reasons that I stipulated to you before.

539 Q. Before. You mean the ones you have given just now?

A. Yes.

Q. In this answer?

A. No, no. In the previous answer. That's all I can think of now.

Q. Don't you ever lose any business because the customer thinks that one of your competitors has a better product?

A. That probably has happened. I can't think of any incident right now.

Q. You can't think of a single one?

A. Where the customer thinks the competitor has a better product?

Q. Yes.

A. No. I can't think of one right now.

Q. Don't you lose any business because the customer gets a cheaper price from one of your competitors?

A. Yes. We have lost business because of a cheaper price.

Q. Don't you ever lose any business because one of your competitors offers better service than Basic does?

A. Currently I can't think of anyone or any instance where they are offering any better service than we do.

Q. Now, you testified, Mr. Sparling, that Basic had to do considerable work in developing new products?

A. Yes.

Q. What are those new products that Basic has developed?

540 A. We spent quite a bit of time in assisting a manufacturer in the development of stewed tomatoes.

Q. Basic did this?

A. Yes, we did. We have helped develop the new items, seasoned green beans, which is on the grocers' store, and there are other seasoned vegetables which are not in the shelves as yet but are coming out. We have worked with people in developing pizza crackers, cocktail dips. We have

helped in dried soups, in dry salad dressings, in sauces, new ideas in retail packaging and new products in retail packaging. And I am sure that my predecessors did considerable, too, in this nature. Our salesmen, when they are calling on customers, do this, develop new work, discuss new ideas and help them and come up with a new product. That's part of their duties.

Q. Your salesmen never did that before April 1, 1951?

A. We didn't have as large a sales force then.

Q. Mr. Sparling, may I have an answer to the question, please? Did your salesmen do that before April 1, 1951?

A. Yes.

Q. Did Basic work with any of its customers in the development of products of the type that you have mentioned prior to April 1, 1951?

A. Yes.

Q. Now, Mr. Sparling, as to all of these products that you mentioned, laying aside these retail packaging and
541 retail products, Basic does not sell any of those products, does it?

A. No, we are only interested in selling the onion and garlic ingredient.

Q. Now, has Basic developed any new products since 1951 that it sells?

A. That Basic sells?

Q. Yes.

A. Other than onion and garlic?

Q. Any new product, sir.

A. Not as I would interpret a new product.

Q. You have testified, Mr. Sparling, that—and I quote—"Originally we didn't have nearly as many warehouses and we have been—to be competitive we had to open many additional warehouses than prior to 1951."

In how many warehouses did you have space on March 31, 1951?

A. As I recall, there would be Elizabeth, New Jersey; Chicago, Illinois; Dallas, Texas; Vacaville, California; and Los Angeles, California.

Q. And all of the warehouses that you mentioned earlier in your testimony, in which you have warehouse space, you have acquired that space since March 31, 1951?

A. Without checking the records, I would say that is correct.

Q. Mr. Sparling, don't you expect as a business man to acquire more warehouse service to better satisfy your
542 customers' needs when you are in an industry that is growing and in which the demand for your products is increasing?

Mr. Hays: Objection. That is not relevant, what he expects. It is not a factual issue and has no probative force.

Mr. Walker: Your Honor, the witness has testified that warehouse space was acquired in a number of cities because of the increased competition offered by Gentry, and I am trying to bring out, as I personally believe to be the fact, that these warehouse spaces were acquired because of the increase in the industry. I think it is a perfectly legitimate line of questioning, to find out if this did not have an impact on the company also.

Hearing Examiner Kolb: Read the question, please.

(Question read.)

Hearing Examiner Kolb: Objection will be overruled.

The Witness: We had a limited number of warehouses.

Mr. Walker: I beg your pardon?

The Witness: Will you read the question again, please?

Mr. Walker: If you cannot answer it yes or no, please say so, and if you can answer it, do so.

(Question read.)

The Witness: No, I consider the original arrangement fairly adequate.

543 By Mr. Walker:

Q. I just want to be very careful about this, Mr.

Sparling. Are you testifying that every bit of additional warehouse space that was acquired by Basic after April 1, 1951, was solely because of the increased competition that, in your opinion, was manifested by Gentry?

A. I would say with the possible exception of one.

Q. And with the exception of that one, Mr. Sparling, every square foot of warehouse space that you have acquired additionally after April 1, 1951, none of that was acquired in response to the increased demand for your products and the increased growth in this industry?

A. No.

Q. You have testified, Mr. Sparling, that we have had to add men to our sales force since April 1, 1951. Is that right?

A. Yes.

Q. How many salesmen did Basic have on March 31, 1951?

A. I believe we had five.

Q. And how many salesmen have you added since that time?

A. Five.

Q. And is it your testimony, Mr. Sparling, that all five of those additional salesmen were added because of the, as you characterize it, increased competition manifested by Gentry?

544 A. All five would be because of increased competition.

Q. And none of them were added because or as a result of the growth of this industry and the increased demand for your product; is that right?

A. Yes.

Q. I believe you testified, Mr. Sparling, that you sell to certain users of your products through distributors; is that right?

A. Yes.

Q. Do many companies purchase your products from distributors?

A. I do not have access to the distributors' records.

Q. You don't know how many, is that right?

A. No, I do not know.

Q. You do not know the identity of all companies that purchase your products from distributors; is that right?

A. That is right.

Q. And some of your customers that you formerly sold direct stopped buying directly from you and started purchasing your products from your distributors?

A. Yes.

Q. Now, you testified, Mr. Sparling, that as to certain named companies that Basic has not sold them any products since 1951; is that right?

A. Repeat the question.

(Question read.)

545 A. To certain named companies?

Mr. Walker: Yes. You named some companies that Basic has not sold any products to since 1951. The companies, if it will refresh your recollection, were Fred W. Albrecht, Central States Coffee and Spice, J. F. Conrad Grocery Company, Jewel Tea Company, Lincoln Food Exchange, Smart & Final Company, United Grocers, and Safeway Stores.

A. Yes.

By Mr. Walker:

Q. Do you recall that now?

A. Yes.

Q. You don't know, do you, Mr. Sparling, whether any of these companies are purchasing anything from Puccinelli Packing Company, do you?

A. No.

Q. Do you know whether the Lincoln Food Exchange has been purchasing any of your products from any of your

distributors since 1951?

A. I do not know.

Q. Do you know whether Fred W. Albrecht has been purchasing any of your products from your distributors since 1951?

A. I do not know.

Q. Do you know whether the Central States Coffee and Spice Company has been purchasing any of your products from any of your distributors since 1951?

546 A. I do not know.

Q. And these companies you have stated do not purchase from Basic may be purchasing Basic products from your distributors; is that right?

A. It would be possible.

Q. Does Basic sell any dehydrated onion or garlic to customers outside the United States?

A. Yes.

Q. Where are those customers located, please?

A. We have customers in Canada.

Q. Anywhere else?

A. In Europe, Mexico, Africa, and that's all I can think of now.

Q. Does Basic have any salesmen operating in any of these countries?

A. Basic has a salesman in Europe.

Q. Oh, they do?

A. Yes.

Q. How long have they had a salesman in Europe?

A. I think it's two years.

Q. Does Gentry sell any products in Europe, Mr. Sparling?

A. I do not know.

Q. Well, having refreshed your recollection that you have added a salesman in the last two years that sold your products in Europe, do you still say, Mr. Sparling, that

547 you have added all of your salesmen since 1951 solely to meet the increased competition manifested by Gentry?

A. In answering you, I excluded the European salesman when counting the number of salesmen added. We consider him as a separate unit. This is entirely an experiment in Europe, and it's not proving too satisfactory.

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Redirect Examination

By Mr. Hays:

Q. Mr. Sparling, I believe that you stated that in your opinion Basic had lost sales of onion and garlic on account of the Consolidated-Gentry relationship; is that correct?

A. Yes.

Q. What was the basis for that opinion?

A. Sales reports, communications from the salesmen, and my own contacts, and conversations with the salesmen.

Mr. Hays: Your Honor, I have a number of documents that I ask be marked for identification.

Mr. Walker: Excuse me, Mr. Hays, before you go ahead.

548 Your Honor, may I just keep the record complete. Since by the witness' answer it is obvious that his opinion is based upon hearsay, I move to strike all of his testimony regarding the loss of sales of onion and garlic on account of the Gentry-Consolidated relationship.

Hearing Examiner Kolb: The motion will be denied.

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548-549 [At the request of Mr. Hays, Commission Exhibits 124 through 134-D were marked for identification.]

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549 By Mr. Hays:

Q. Mr. Sparling, I hand you Commission Exhibit 124 for identification and ask you to examine it and state what it is.

Q. This is a sales report covering the same—the contact made by our salesman, Roy Shaw, and our broker, Brand, on the Olympia Mushroom Company, May 13, 1952.

Q. I hand you Commission exhibit for identification 125. and ask you to examine it and state what it is.

A. This is a memorandum which I wrote on June 4, 1952, to our midwestern sales manager, Mr. Benzies.

Q. I hand you Commission exhibit for identification 126 and ask you to examine it and state what it is.

550 A. This is interoffice correspondence to me from our midwest sales manager, Mr. Benzies, dated June 13, 1952.

Q. I hand you Commission exhibit for identification 127-A and 127-B and ask you to examine those documents and state what they are, each one.

A. 127-A is a memorandum from Bill White to me, dated May 30, 1953, and 127-B is a copy of a letter from the Michigan Mushroom Company to Mr. William White, dated May 6, 1953.

Q. I hand you Commission exhibit for identification 128 and ask you to examine it and state what it is.

A. This is a teletype message that was received in our office on June 12, 1952, from our Chicago office. The teletype message is addressed to me.

Q. I hand you Commission exhibit for identification 129 and ask you to examine it and state what it is.

A. This is a sales report dated November 12 on a call made by our salesman, Mr. Benzies, at the Indiana Mushroom Company.

Q. I hand you Commission exhibit for identification 130 and ask you to examine it and state what this is.

A. This is a sales report from our midwestern salesman, Mr. Wachholz, dated January 24, 1955, a call at Aurora Frozen Food.

Q. I hand you Commission exhibits for identification

131-A and B, 132-A, 132-B, 132-C, 133-A, 133-B, 134-A 134-B, 134-C, 134-D, and ask you to examine them and tell me what they are

551 A. Each will be identified individually?

Q. Yes.

A. 131-A is our sales card from the Olympia Mushroom files. 131-B is a continuation of the sales card from the Olympia Mushroom files. 132-A is the sales card on Michigan Mushroom Company. 132-B is a sales card, Michigan Mushroom Company. 132-C is a sales card, Michigan Mushroom Company. 133-A, sales card, Indiana Mushroom Company. 133-B, sales card, Indiana Mushroom Company. 134-A, sales card, Aurora Frozen Food. 134-B, sales card, Aurora Frozen Food. 134-C, sales card, Aurora Frozen Food. 134-D, sales card, Aurora Frozen food.

Q. Now, Mr. Sparling, these sales cards which have been numbered 131-A through 134-D contain information on them. Will you state just what that information was and how it was placed on those cards and how the cards were maintained by your office?

A. The sales cards were maintained in the office for the purpose of having a complete sales record for each firm that we contact. The front of the card is to be a summary of the contact. The back of the card is a record of actual sales by month.

At the end of each month a clerk takes the invoices and breaks them down and posts the pounds sold for each product to each customer for that month. The fronts of the cards have been maintained accurately, except we have not put on information where there was nothing significant

552 to report in the mind of the clerk who filled them out.

Q. The sales figures on these cards 131-A through 134-D, are the same sales figures with reference to the companies indicated on the cards that were furnished to Mr. Walker for cross-examination this morning; is that correct?

A. Yes. Except on the original copy we used a pencil and green. Where the sales card records were not avail-

able, we took the account and broke it down and that was designated in the green.

• • •

555 Q. I show you Commission Exhibit for identification 219 and ask you to examine it and state what it is and how it was prepared?

A. This is a record of sales by years, 1949 through 1957, for certain accounts for both onion and garlic sold by Basic Vegetable Products. These figures were taken from the sales cards where available.

Q. By "sales cards" you mean 131-A through 134-D?

A. Yes. There were occasions in trying to compute this that we did not have a sales card or could not locate it and in that instance or those instances we went to the actual files, removed the accounts and added up the pounds sold from the original—or from our copies of the invoice.

Mr. Walker: Which ones are those?

The Witness: The green.

Mr. Walker: Thank you.

By Mr. Hays:

Q. Now, this sheet now identified as Commission Exhibit 219, is that the sheet which was handed to Mr. Walker this morning from which he was questioning you concerning the sales to firms indicated on this sheet?

556 A. That's correct.

Mr. Hays: I offer Commission Exhibit for identification 219.

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558 (The document referred to, heretofore marked for identification Commission's Exhibit 219, was received in evidence.)

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Mr. Hays: I offer Commission Exhibits for identification 124, 125, 126, 127-A, 127-B, 128, 129, 131-A, 131-B, 132-A, 132-B, 132-C, 133-A, 133-B, 134-A, 134-B, 134-C, and 134-D.

Mr. Walker: You did not deliberately omit 130, did you?

Mr. Hays: No, I did not.

Mr. Walker: It should be in the list?

Mr. Hays: Yes.

* * *

565 By Mr. Hays:

Q. Mr. Sparling, where did you get these documents from, Commission Exhibits 124 through 130?

A. From my files.

Q. How did they happen to get in your files?

A. They are received in our office through the normal channels of mail, or they were written from our office, or they came over the teletype machine.

566 Q. For what purpose were they kept in your files?

A. They are kept in our files so we are familiar with the activities that are going on with our salesmen and what we are doing to promote sales.

Mr. Walker: May I ask, is it your opinion to offer these documents under the Federal Shop Book Rule?

Mr. Hays: It is my purpose to offer these documents under the Federal Shop Book Rule. It is also my purpose to offer these documents as those documents which form the basis of the witness' opinion in this case.

Mr. Walker: Just two more brief things, Your Honor, and then I will have finished on this subject.

Based on the witness' answers to the questions which I asked him, it is perfectly obvious that he cannot state, as he just did, that these documents were received in the office through the normal channels of mailing. Those were his own words just answered. And I submit that they don't accord at all with the facts as he related them in his prior testimony.

Secondly, Your Honor, I will object to the admission of the documents under the Federal Shop Book Rule, on the grounds that a proper foundation has not been laid; that is, it has not been shown that it was in the regular course of business for the person writing these documents to re-

cord the transactions or acts that are actually reflected therein at or about the time that the transactions or
567 acts occurred, and therefore the foundation is not complete.

Hearing Examiner Kolb: Will you read me the previous objections that were made, Mr. Reporter?

(The Reporter read as follows:

"Mr. Walker: Your Honor, I will object to the admissibility in evidence of Exhibits 124 through 130 on the ground that it is clear from the witness' answer that no proper foundation has been laid to comply with the rules of evidence, that is, that it must be proven as to documents that are written by the witness, not only that he wrote the document, but that it was mailed, or testimony by somebody who can testify that in the normal course of business that person himself testifying would have mailed it.

"As to the documents received, it is apparent from the witness' testimony as to several of these documents that he doesn't have any recollection of having read the document on or about the date that it bears, and I submit, therefore, that no proper foundation has been laid for the introduction of these documents in evidence.")

Hearing Examiner Kolb: I don't think the law requires of a witness to testify that he signed, sealed and stamped a letter and put the letter in a United States mailbox in order to make it admissible in evidence. I will overrule that
568 objection.

As to the recollection as to receipt, the witness testified, after looking at the document, that he recalled receiving it on or about the date that it bears. I will overrule all objections and receive the documents in evidence as Commission's Exhibits 124, 125, 126, 127-A, and B, 128, 129 and 130.

(The papers referred to, heretofore marked for identification Commission's Exhibits 124, 125, 126, 127-A, 127-B,

128, 129 and 130, were received in evidence.)

Mr. Hays: I offer Commission's Exhibits for identification 131-A through 134-D.

Hearing Examiner Kolb: You may show them to counsel.

Mr. Walker: May I cross-examine on voir dire, Your Honor?

Hearing Examiner Kolb: You may.

Voir Dire Examination

By Mr. Walker:

Q. Mr. Sparling, who personally or who physically writes the information that appears on these cards marked Exhibits 131 through 134?

A. In the front or the back of the card?

Q. On the front, please.

A. The Clerk in the office.

Q. By the clerk, do you mean a secretary?

569 A. It has been a secretary, yes.

Q. Where does this secretary or clerk obtain this information.

A. She obtains it from the copy of the sales report. She obtains it from a copy of the memorandum, or a copy of the letter involved.

Q. And I believe you stated, Mr. Sparling, that this person who copies this information on here does not purport to keep everything that appears on these documents that she writes from; is that right?

A. That is correct.

Q. And it is for her judgment to decide what she writes on a card and what she does not?

A. It is for her judgment, after we instruct her what we would like to put on the front of the card.

Q. Do you instruct her as to each individual typing card?

A. We give her general instructions.

Q. That are applicable to all the cards she types; is that right?

A. That is correct.

Mr. Walker: Your Honor, I will have to object to the admissibility of these records or cards in evidence. I don't believe there is any showing that the foundation required under the Federal Shop Book Rule has been met with as to these, and I further submit, Your Honor, that inso-
570 far as the general evidence is concerned, they are very unreliable here, because we have admittedly an untrained employee copying information from other documents and admittedly not copying all of it. So there might be very relevant material that is left off when this girl, secretary or clerk, types the information on the cards.

I submit, therefore, Your Honor, that this material does not reach the level of reliable evidence that should come into these proceedings.

Hearing Examiner Kolb: Is the party that makes those notations on the card the one who has charge of the cards? When we speak about a girl making notations, would that be a girl who has charge of the cards, or your private secretary, or somebody of that sort?

The Witness: The girl who makes the notations on the front of the cards is in charge of the cards, or the lady that does it.

Hearing Examiner Kolb: Those cards are kept in the ordinary course of business?

The Witness: Yes, sir.

Hearing Examiner Kolb: And they are used by you in connection with your operation of your business?

The Witness: Very definitely used by us.

Hearing Examiner Kolb: The objection is overruled.

The documents will be received in evidence as Com-
571 mission's Exhibits 131-A and B, 132-A through C, 133-A and B, and 134-A to D.

* * *

Redirect Examination—Resumed

By Mr. Hays:

Q. Mr. Sparling, with reference to the information contained in Commission Exhibits 124 through 134-D, were they used in any way in formulating your opinion, which you testified to, with reference to the relationship of the loss of sales by Basic—

A. You will have to repeat the names of the documents so I will know the ones you are talking about.

Q. 124 through 134-D.

A. Yes.

Q. Would you explain how you used that information in reaching your opinion with reference to the companies involved?

A. In which opinion?

Q. Your opinion that as a result of the relationship between Consolidated and Gentry, Basic had lost sales.

A. In May of 1952 we sent our salesman into the northwest, and he contacted the Olympia Mushroom Company. He reported back "Consolidated Grocery is one of Olympia's best customers. Their top management at Michi-
572 gan Mushroom Company decided it would be expedient to buy all onion and garlic from Gentry. Yarboro has protested this without results. Rather than to cancel the balance of the contract, it was decided to leave it open, although it was doubtful that any additional quantities would be withdrawn."

Olympia Mushroom Company is a subsidiary or a division of Michigan Mushroom, although they buy independently, and they have had their own contract. Inasmuch as this word came from the Michigan Mushroom, we then contacted that firm. We had previously noted that sales to Olympia Mushroom and the other divisions of the company had declined.

Our saleman reported back after making his contact at

Michigan Mushroom, and wrote a memorandum on June 13, which reads—

Mr. Walker: Your Honor, just in the interests of expediting the proceeding, I would like to object to the witness putting the material in from the documents. The documents speak for themselves. If he can supply any additional information that is not in the documents, then I think he should certainly be permitted to do so, but insofar as just sitting there and repeating what is in the documents, I object on the grounds that the documents speak for themselves, and they are in the record as exhibits.

Mr. Hays: Rather than repeat the documents, just tell how you used that information, sales figures, sales 573 cards and documents in reaching your determination as to the loss of sales, or your opinion as to the loss of sales.

Hearing Examiner Kolb: Doesn't that show from the documents themselves?

Mr. Hays: It shows from some of the documents themselves. Perhaps I can get at it another way, Your Honor. There is a point I wish to make.

By Mr. Hays:

Q. With reference to the Olympia Mushroom Company, from the sales cards and information, how did you conclude that there was a loss? How did you reach that opinion as to the loss?

A. We reached as to the loss at Olympia Mushroom, after receiving the sales report in which our salesman advised Olympia Mushroom had received instructions from the Michigan Mushroom Company that it would be expedient to buy all onion and garlic from Gentry as Consolidated Grocers is one of their best customers. We did not sell Olympia Mushroom Company again. That is how I reached the conclusion that the loss of sales was due to the relationship between Gentry and Consolidated.

Q. How did you reach the conclusion with reference to the loss of sales to the Michigan Mushroom Company?

A. In June, our sales manager for the midwest wrote us a memorandum on his call at the Michigan Mushroom Company. He was informed at their office in Niles, 574 Michigan —

Mr. Walker: Excuse me. Is this document in the record that you are speaking of?

The Witness: Part of it is. What I am taking right now to arrive at the conclusion would be in the record.

Mr. Walker: I am going to object again to this witness putting into the record what a document includes that is already in the record. The documents speak for themselves.

Mr. Hays: Would you like him to refer to the document by number, Your Honor?

Hearing Examiner Kolb: Let the witness go ahead and answer. Maybe we can save time that way.

The Witness: Do you want me to refer to the documents?

Hearing Examiner Kolb: Go ahead the way you were going.

The Witness: May I have that last answer read?

(Answer read.)

The Witness: — that the president of the Sprague Warner Division of Consolidated Grocers had written a letter to the Michigan Mushroom Company suggesting that they use Gentry's onion and garlic inasmuch as the Sprague Warner Division of Consolidated Foods is a customer of the Michigan Mushroom.

When this letter was received at Niles, the manage- 575 ment at Niles instructed the plants to buy from Gentry.

However, we continued to make sales to the Michigan

Mushroom, but in our basis there was a loss of sales to the total merchandise required.

About one year later, Mr. White of our Chicago office received a letter from the Michigan Mushroom in which they stated the pressure contract had expired and that the Indiana Mushroom Company could now buy from Basic. With this information I feel — it is my opinion there was a loss of sales at the Michigan Mushroom Company and their divisions.

Mr. Walker: Your Honor, this last answer, I am not sure whether the various letters that Mr. Sparling described are all in the records. If these records are not in the record, then I object to this method of putting references to a document in evidence. I further object and move to strike on the grounds that the testimony is obviously based on double hearsay.

And finally, Your Honor, I move to strike because there was blatant speculation contained in the witness' answer as to what he expected might happen. I think this is very unreliable evidence, Your Honor, that is going into the record at this time.

Hearing Examiner Kolb: He has given a basis for his opinion that he has lost business. Certainly he has a right to give that opinion and, as I understand it, the letters to which you referred are among those documents there?

576 The Witness: Yes, sir.

Hearing Examiner Kolb: You have not referred to any letter which is not in evidence?

The Witness: No, I have not.

Hearing Examiner Kolb: Objection overruled.

By Mr. Hays:

Q. Can you state what the basis was for your opinion that you had lost sales of Aurora Frozen Foods to Gentry as a result of the Gentry-Consolidated relationship?

A. It was my opinion that we had lost sales to the

Aurora Frozen Foods because of the Gentry-Consolidated relationship from learning of the letter received at the main office at Niles, Michigan, and instructions which were sent out from that main office to the subsidiaries.

Mr. Walker: May I interrupt for a second?

Hearing Examiner Kolb: Yes.

Mr. Walker: I am reminded that possibly this witness in an earlier answer referred to a letter from Sprague Warner Division, or was that a conversation, Mr. Sparling?

The Witness: That was in the sales report.

Mr. Walker: Did the sales report that you are talking about refer to a letter from —

The Witness: Yes, it did.

Mr. Walker: I will further move to strike the 577 reference to a letter which is not in evidence, Your Honor.

Mr. Hays: The basis is the sales report, Your Honor.

Hearing Examiner Kolb: Objection overruled. Motion to strike denied.

By Mr. Hays:

Q. Is that the basis that you had testified with reference to Olympia and Aurora Frozen Foods, the same basis that you used for your opinion with reference to Indiana Mushroom Company?

A. Yes, it is.

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577 - 589 [At the request of Mr. Coughlin, one of the attorneys for the Federal Trade Commission, Commission Exhibits 135-A to 218 were marked for identification. It was stipulated by counsel for respondent, Consolidated Foods Corporation, that with reference to Commission Exhibits 135-A through 218, the witness would testify and identify the various categories of documents in the same manner as he has testified and identified Commission Exhibits 124 through 133-B.]

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590 Mr. Hays: I offer Commission Exhibits for identification 135-A through 218.

Mr. Walker: May I examine on voir dire?

Hearing Examiner Kolb: Yes.

Voir Dire Examination

By Mr. Walker:

Q. Mr. Sparling, having reference to these sales cards that are included in this group of exhibits 135 through 218, do you know the documents to which I refer?

A. Yes, sir.

Q. Do you know who typed each one of those cards, Mr. Sparling?

A. These cards—I know the person who has typed those cards.

Q. You can say of your own personal knowledge, Mr. Sparling—and I want this to be absolutely carefully
591 correct—that you know the person who typed every single one of those cards that are included in Exhibits 135 through 218?

A. Will you explain what you mean by the word "know"?

Q. Do you know who did it?

A. I know the names of the individuals who have worked on those cards.

Q. All right. And you know the names of every individual who typed on those cards? And I am now referring to the front side of the cards. Is that right?

A. You are referring to the front sides?

Q. Yes.

A. I can't recall the name of the girl who typed the fronts of the cards back in '47 and '48. I believe I recall the rest of the names.

Q. Now, at any one time does more than one person type these cards?

A. No.

Q. At all times it is only one person who has the responsibility of typing the material on these cards from incoming correspondence or call reports of one type or another; is that right?

A. Yes.

Q. And that is always the person who has charge of the cards?

A. Yes.

Q. No other person in the office ever types material 592 on the front side of these cards; is that correct?

A. I can't recall anyone else in the office typing on the front side of those cards, other than the individual responsible for keeping the cards.

Q. Did you see every one of these cards typed, Mr. Sparling?

A. No.

Q. Then what you have just said is just an assumption; is that right?

A. In the normal course of running our office, that would be the way it would function.

Q. But you don't know whether the normal—you don't know of your own personal knowledge whether the normal course was followed as to every one of these cards, do you?

A. Not being in the office all the time, no.

Mr. Walker: Your Honor, I will—well, I will first renew my objection both as to the cards that have already been received in evidence over my prior objection, and I will make a separate objection as to all of these cards, on the grounds that the testimony of the witness indicates that they do not reach the level of credibility which is ordinarily required of documents, even in administrative proceedings.

I will further object to all of these documents on the ground that they are of themselves hearsay, and also object on the grounds that many of the documents contained hear-

say; that many of the documents contain opinions and conclusions.

593 I will object on the grounds that the requirements of the Federal Shop Book Rule have not been met in so far as the laying of a foundation for introduction of the documents in evidence is concerned, and I will further object on the grounds that no other foundation of a proper degree has been laid before receiving in evidence any of these documents.

Hearing Examiner Kolb: You are dealing now with the cards or with everything?

Mr. Walker: Everything, Your Honor.

Hearing Examiner Kolb: I think in the rest of your voir dire examination of the witness as to the cards, I think it has been definitely shown that the cards were kept by the party who is in charge of the cards and the notations were made thereon. They became part of the records of the company.

Mr. Walker: May I respectfully interpose, Your Honor, that I think the witness has testified he doesn't know who typed this information.

Hearing Examiner Kolb: You finally asked him around to where he said he didn't stand over them to see whether they wrote them or not. But I think in the ordinary course of business, he has testified that the party in charge of the cards, it was their responsibility to type the notations on the cards, and I think that we can all assume, for the purpose of this case, that that was done.

I don't think they are going to slip somebody in 594 there not authorized from the office or some place else and suddenly type something on that card and stick it back in the file.

Mr. Walker: That would not be my assumption. But I would assume that if this office is run like most other offices I know of, that work of this type is normally picked up and

handled by other people in the office who have other things to do and fill in doing this sort of work.

Now, we don't have any evidence in this record at all that this was not done. And it is my suggestion, Your Honor, that the only way a proper foundation could be laid would be to call the person who typed the cards from the call reports. That is my opinion, Your Honor.

Hearing Examiner Kolb: I think they stand in the same position as the bookkeeper making an entry in the books. You wouldn't call every bookkeeper the company had had at all times in order to show those records. I think this stands in the same position as that, because they are records which are kept—the responsibility for keeping it was placed on the part of the individual who has charge of the cards, and I think we can accept it as such. So I will overrule the objection.

The documents may be received in evidence as Commission's Exhibits 135 through 218.

* * *

595-597 [Commission Exhibits 135-A through 218 were received in evidence.]

* * *

597 *Redirect Examination—Resumed*

By Mr. Hays:

Q. Mr. Sparling, will you state to what extent Commission Exhibits 135-A through 218 were used as the basis for your opinion that Basic had lost dried onion and garlic sales as a result of the relationship between Consolidated and Gentry since April of 1951?

A. Collectively, you mean?

Q. Yes.

598 A. Repeat the question.

(Question read.)

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Hays:

Q. Do these documents constitute the basis for your conclusion or opinion that you have lost sales except for the sales figures represented in green figures on Commission Exhibit 219?

A. For all, with the exception of the Lake Odessa Canning Company.

Q. And what is the basis for your opinion in that instance?

A. The document is partially the basis. The other is a conversation with our sales manager in the midwest on the telephone, and there is nothing in there to support that telephone conversation.

Q. Now, with reference to—

Mr. Walker: Excuse me. May I move to strike the witness' answer on the ground that it is founded upon hearsay and introduced as the subject matter of the telephone conversation which has not been proved in accordance with the rules of evidence.

Hearing Examiner Kolb: He has not introduced the subject of that telephone conversation.

Mr. Walker: I believe he has, Your Honor, in the 599 sense that he has said that his opinion that Basic lost sales to Gentry because of the Consolidated Foods relationship is founded upon that telephone conversation. It must be that there was something in that telephone conversation that related to that subject. So indirectly you are getting into evidence the telephone conversation.

* * *

Hearing Examiner Kolb: I will sustain the objection to the telephone conversation.

By Mr. Hays:

Q. Will you state the circumstances under which the telephone conversation took place that you referred to?

A. It was a regular telephone call which we make frequently in the course of our business to the salesmen. In discussing accounts he mentioned that Lake Odessa Canning Company's business we would not be receiving.

Mr. Walker: I move to strike the witness' answer, 600 which states the substance of the telephone conversation, on the ground that no proper foundation has been laid.

Hearing Examiner Kolb: He talked to him and he recognized his voice. Go ahead.

By Mr. Hays:

Q. When did this telephone conversation occur?

Mr. Walker: Your Honor, I will withdraw my objection relating to the foundation for a telephone conversation, and I will make the objection solely on the hearsay grounds, Your Honor.

Hearing Examiner Kolb: He hasn't given the telephone conversation yet, has he?

Mr. Walker: He did in his last answer.

Mr. Hays: He gave the substance of it, Your Honor.

Hearing Examiner Kolb: That they wouldn't be getting any more business from Lake Odessa.

The Witness: This telephone conversation occurred—after his visit there we learned this information, and I can't recall the date. I can't recall the date.

By Mr. Hays:

Q. Can you give that approximate date when it occurred?

A. No. I don't recall the date.

Mr. Walker: Did you rule on my objection for the record, Your Honor?

Hearing Examiner Kolb: Do you want to strike the
601 testimony that he had a telephone conversation in which he was told they would not get the business any more?

Mr. Walker: Yes, Your Honor.

Hearing Examiner Kolb: As the basis for his opinion?

Mr. Walker: Yes, Your Honor.

Hearing Examiner Kolb: I will sustain the objection.

By Mr. Hays:

Q. Now, with reference to Commission Exhibit 219, Mr. Walker brought out in his cross-examination that in so far as some of the companies listed thereon, the sales to those companies do not refer to total sales of that particular company. That is, Mr. Walker went over some companies. Do you recall those companies?

A. I believe he was referring to Oscar Mayer, George A. Hormel & Company, Armour & Company, and Gerber Products Company. I believe those were the ones.

Q. Will you state why those figures were left out of this compilation?

A. At Oscar Mayer & Company in Madison, Wisconsin, we heard through the Purchasing Department of a contact by Consolidated's sales force—

Mr. Walker: Excuse me. I am going to interrupt to object to the answer coming in on the ground that it is hear-
say and apparently is not responsive to the question. I
602 move to strike the answer.

Hearing Examiner Kolb: I do not believe it is responsive to the question. You asked him why he did not include it in his list.

Mr. Hays: May I suggest that we hear the witness out, and I think it will be responsive, Your Honor, if you hear the whole thing.

Hearing Examiner Kolb: All right. Let the witness answer.

Will you read the answer so far?

(Answer read.)

The Witness: —to Oscar Mayer's sales force suggesting that Oscar Mayer at Madison purchase Gentry onion and garlic. We have not heard this at the other Oscar Mayer plants, and the other plants buy independently of the Madison Purchasing Department. I do not feel there was any loss of business at the other plants. For that reason, I did not include them.

Mr. Walker: I will move to strike all of it up till the last sentence, Your Honor, on the grounds that it was not responsive to the question asked, and further object and move to strike on the grounds that that portion of the answer was hearsay testimony.

* * *

603 Hearing Examiner Kolb: We will strike the answer and let me ask a leading question.

Mr. Witness, with reference to those divisions of Oscar Mayer which you testified were not included in the document you presented, was that because you felt that you had not lost business with reference to those companies but 604 had lost business only with reference to the one at Madison, Wisconsin? Is that correct?

The Witness: That is correct, Your Honor.

Hearing Examiner Kolb: Is that satisfactory?

Mr. Walker: That is just fine, Your Honor.

Hearing Examiner Kolb: No objection to it?

Mr. Walker: No objection.

Mr. Hays: May I ask a leading question, then, with reference to these other situations?

Mr. Walker: Surely, in this area, if this is the easiest way to get the answer with relation to all of these companies so that the witness will not talk too long. I am all in favor of it.

By Mr. Hays:

Q. George Hormel Company was another instance where

you did not include total sales of that company, is that correct?

A. Yes.

Q. You did not include total sales to that company since you felt the loss was due or resulted out of only one purchasing department of Hormel Company?

A. That's right.

Q. Will you just run down the list on Exhibit 219 and state which of the companies there you did not include total sales to, other than Hormel and Oscar Mayer?

A. I did not include total sales at Gerber Products, Fremont.

605 Q. Do Gerber Products, Fremont, have other plants?

A. Correction. I did not include total sales for Gerber Products Company's plants, except total sales for Fremont.

Q. Do they have other plants that sell your purchases?

A. Yes, they do.

Q. Where are they located?

A. Rochester, New York, and Oakland, California.

Q. And the reason for your not including any sales, if any, to those plants was the fact that you felt that in your opinion the only loss of sales was that which resulted out of the Fremont plant?

A. Right.

Q. Any others?

A. No.

Hearing Examiner Kolb: Wasn't Armour involved in that?

By Mr. Hays:

Q. Is that true of Armour & Company, that they have other plants?

A. Yes.

Q. Did you include your total sales to Armour & Company?

A. Yes.

Q. Is that all?

A. Yes.

Q. On Commission Exhibit 219 there are instances 606 of sales after April 1, 1951. There are instances of increased sales and instances of declining sales.

Do those sales patterns alone form the basis for your opinion with reference to the loss of sales as a result of the Gentry-Consolidated relationship?

A. The sales patterns alone did not form the complete basis for the relationship—for the loss of sales due to the relationship between Gentry and Consolidated Grocers.

Mr. Hays: That is all I have, Your Honor.

Recross Examination

By Mr. Walker:

Q. Mr. Sparling, these documents that have been produced and offered in evidence here as to these 20-some-odd companies, are not all of the documents that appear in your files in dealing with these companies, are they?

A. No.

Mr. Walker: At this time, Your Honor, I would like to say for the record, so that when we are using photostatic copies of these exhibits, that as to Exhibit 219 the figures that appear opposite J. J. Gielow & Sons for the years 1949, 1950, and 1951, are written in green pencil.

• • •

607 Mr. Walker: The figures that appear opposite Armour & Co. for the years 1949 and 1950 are written in green pencil. The figures that appear opposite Oscar Mayer for the years 1949 through 1957 are in green pencil. The figures that appear opposite the George A. Hormel & Co. for the years 1949 through 1957 are written in green pencil or ink. The figures opposite College Inn for the years 1950, 1951, 1952, and 1953 are written in green pencil or pen.

By Mr. Walker:

Q. Now, in two instances on this schedule, Mr. Sparling, there are figures which have some sort of a footnote mark after them, and at the bottom there appears to be a note, "A mixture of onion and garlic." Does that mean, Mr. Sparling, that there was 10,668 pounds sold by Basic to Rival Packing Company of both onion and garlic?

A. This — there were 10,668 pounds sold, which was a mixture both of onion and garlic.

608 Q. And we have no way of knowing what part is onion and what part is garlic; is that right?

A. They have their formula, and we have their formula in our files, which show the percentage of onion and the percentage of garlic.

Q. I see. That is product that is mixed by you containing both onion and garlic?

A. That is correct.

Q. I see. And that's true of the sales to Rival Packing Co. in 1955; is that right?

A. That is correct.

• • •

613 Hearing Examiner Kolb: Let the record show that in my ruling receiving into evidence the sales cards, 614 that the notations appearing on the face of the card made by the person in charge of the records showing various notations as to letters and other information is received solely to show that a contact was made as to the date shown on the card and is not evidence as proof of the information contained on the face of the card.

This does not apply to the sales record on the reverse of the card, which is received to show that those sales were made.

Mr. Walker: And by contact we mean contact by a Basic salesman with the customer.

Hearing Examiner Kolb: Yes.

Mr. Hays: Or sales representative.

Mr. Walker: Yes.

Mr. Hays: Or someone trying to sell. Sometimes management tries to sell.

Mr. Walker: I understand.

Hearing Examiner Kolb: In other words, it doesn't prove as a fact the statements which appear on the face of the card.

• • •

615 Chicago, Illinois
June 15, 1959

616 PROCEEDINGS

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616-617 [Commission Exhibits 220A through 221Z-35 were offered and received in evidence]

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617 AL LERNER was thereupon called as a witness for the Commission and, having been first duly sworn, 618 testified as follows:

Direct Examination

By Mr. Hays:

• • •

Q. State your name and address and where you are employed, sir.

A. My name is Al Lerner. I reside at 4700 West Estes, Lincolnwood, Illinois. I am employed by Consolidated Foods Corporation in River Grove, Illinois.

Q. What is your present position?

A. I am a Vice-President, Director of Purchases.

Q. Have you held previous positions before the present position?

A. With Consolidated?

Q. Yes, sir.

A. Yes, I have.

Q. Will you describe the positions you have held since 1951?

A. I was employed by Consolidated in 1948, I believe it was, when they took over the Royal Blue Stores—no, I am sorry, 1952 when they took over the Royal Blue
619 Stores. I was a head buyer at Royal Blue for one year until '53.

Q. Then, you obtained your present position in 1953?

A. In 1953, that is right.

Q. Will you describe the purchasing operations of Consolidated Foods and the various subsidiaries and divisions?

A. At the various subsidiaries?

Q. Yes, sir, and at Consolidated Foods level as well.

A. Well, our office functions in two areas. You mean what we do in the buying office?

Q. Yes, sir.

A. Well, our areas of buying are divided into two broad categories. We buy every that [sic] that the River Grove distribution unit sells, both in advertised brands as well as in our own brands, private merchandise. The areas we operate in, we set up sources of supply on our own label merchandise for all other Consolidated distribution or selling units.

Q. Who handles the purchases for the various divisions and subsidiaries?

A. As far as the advertised brands are concerned, each unit does their own buying.

Q. Are you familiar with the purchases made by Consolidated Foods during the period 1952 through the present time—various customers?

A. Well, in 1952 I was at Royal Blue, so I would only be familiar with that operation.

620 Q. In 1953 you would be familiar from then on with the purchases of various of your suppliers, purchases from your suppliers?

A. I would be familiar to the extent of private label merchandise, but not advertised brands.

Q. Who in Consolidated Foods would be familiar with the advertised brand purchases?

A. Well, that would be every person at the local level.

Q. Are you familiar with Wyler and Company of Chicago, Illinois?

A. Wyler?

Q. Wyler.

A. Yes.

Q. Can you state what type of business they are?

A. They manufacture soup mixes and drink mixes, I believe, is their primary business.

Q. During the period 1952 through to the present, do you know what and how much was purchased by Consolidated Foods from this Company?

A. By all of Consolidated Foods. No, I would not know.

Q. Do you know anything as to the amount of purchases by any part of Consolidated Foods from this company?

A. Well, in 1953, we were functioning as private label buyers. After about 1955, I believe, we then became familiar with Wyler and Company Sales to the River Grove unit.

621 Q. Did you purchase anything in 1953 from that company?

A. I believe we did, but our purchases from them are very small.

Q. Do you know the approximate amount of your purchases in 1953?

A. I would say— in '53?

Q. Yes, sir.

A. I would say not over a couple thousand dollars. This is for Chicago.

Q. For River Grove only. That is your own label goods?

A. No, it is mainly their own label, advertised brands.

Q. Do you know what these purchases consisted of, soups?

A. I believe it would be primarily soup mixes until last year when they came out with a new lemonade mix and that includes the sales.

Q. Do you know the dollar amount of your purchases in 1954?

A. I would say our purchases from them were relatively stable through the years.

Q. In other words, approximately 2,000 per year from 1953 to each year up to the present?

A. I would say that, yes.

Q. Can you give me the same type of information with reference to Custom Foods, Inc., of Chicago?

A. Well, Custom Foods, we bought some private label soup mixes and possibly their own label mixes. Again, 622 you are speaking of River Grove, I assume?

Q. Yes, sir, that is the only thing you are qualified to speak on.

A. On advertised brands, that is right.

Q. Did you purchase any private label brands from them?

A. Very little. We did buy some at one time but for competitive reasons we switched to another supplier.

Q. Can you state dollar amounts for each year?

A. Well, there again, I would say probably around $3,000 a year with a tendency to decrease as we switched to other suppliers.

Q. What was it last year?

A. I would estimate around $2,000.

Q. What did these purchases consist of—what type of products?

A. Soup mixes.

Q. Are you familiar with the purchases from Wass Food Products?

A. Yes.

Q. Will you describe the extent of those purchases, what they were and how much they were for each of the years you are familiar with?

A. Well, I know that we bought from Wass—on, we bought from Wass for possibly ten years. Originally we bought private label dressings and in about '53, I be-
623 lieve, he came out with barbecue sauce, Wass happens to be the packer of open pit barbecue sauce. I would say our business with him increased for several years primarily because of this barbecue sauce and its popularity. I would say in the last three years it may have been steady to slightly decreasing because we switched some of our dressing business to our own plant and to competitors.

Q. Approximately how much dollarwise did you purchase from this company in 1953?

A. In 1953 I would estimate around $10,000.

Q. Would you describe the amount for each of the succeeding years?

A. Well, as I said, it increased on account of the extreme popularity of barbecue sauce. I made a note here. According to our records, it increased to about $75,000 last year, which I believe is a decrease from the peak.

Q. Is that private label merchandise or label—or advertised brands?

A. It is both today.

Q. That private label is your label, that is, Consolidated Foods label?

A. That is right.

Q. Can you describe the type and amount of purchases by Consolidated Foods from Armour and Company of Chicago, Illinois, in 1953 to present?

A. Well, Armour and Company is practically 100
624 per cent advertised brands, their own label.

Q. Consolidated Foods purchased from them?

A. Oh, yes.

Q. Since their advertised brands, you are not familiar with the extent or amount of purchases?

A. I am for River Grove.

Q. What were those amounts for each of the years you are familiar with?

A. Well, I don't have them for each year, but, of course, Armour and Company has been a supplier of Consolidated for many, many years. Before 1956 it was approximately $15,000. After that because of our increased activity in the voluntary group field, it has increased.

Q. Increased to what, sir?

A. I would estimate approximately $60,000. They are heavy advertisers and their products are very much in demand.

Q. Are you familiar with the Michigan Mushroom Company?

A. Yes.

Q. What type of products do they make?

A. They can mushrooms, mushroom sauce. I believe they sell fresh mushrooms as well.

Q. Did Consolidated Foods buy from them?

A. Yes.

Q. Advertised brands or private label?

A. Primarily private label mushroom sauce.

625 Q. What was the extent of Consolidated purchases from 1953 to the present, dollarwise?

A. I would say approximately $15,000 steady.

Q. Per year?

A. Yes.

Q. For River Grove?

A. That is right.

Q. Are you familiar with the Indiana Mushroom Corporation?

A. Well, I believe they are part of Michigan Mushroom.

Q. When you gave the figures for Michigan Mushroom Company, did you include in that the figures of Indiana Mushroom Corporation?

A. To my recollection we never bought from Indiana Mushroom as such.

Q. Are you familiar with Gerber Baby Foods of Fremont, Michigan?

A. Yes.

Q. Will you describe the purchases from that company by Consolidated Foods that you are familiar with?

A. Well, they are packers and advertisers of Gerber brand baby foods, which is their sole business. We have been customers of theirs for many, many years and I think every one knows with the great increase in babies and great increase in the number of baby products, that category of items in the last few years has increased in sales.

626 Q. What amount did Consolidated purchase from Gerbers in 1953?

A. In '53, I would estimate about $180,000. But business has been slightly increasing because of the increase in babies and increase in products.

Q. So you are familiar with approximately $180,000 worth of purchases per year?

A. With a slight increase I would say up to the present time.

Q. You are still speaking of River Grove?

A. That is right.

Q. Are you familiar with Lake Odessa Canning Company?

A. Yes.

Q. What type of products do they manufacture?

A. Canned vegetables, vegetables of various types.

Q. Did Consolidated purchase from that company?

A. Yes, I would say very spotly [sic]. He is not inclined to be competitive.

Q. Will you describe the extent of those purchases by year as you are familiar with them?

A. I would say we probably bought practically nothing from him. There may have been a year or two where, if his price was right, we may have bought, but by and large I would say we bought very little from him.

Q. Would you say approximately $1,000 worth per year?

627 A. Well, there may have been some years we bought more. There are probably years we have not bought anything from him.

Q. Are you familiar with Oscar Mayer Company of Madison, Wisconsin?

A. Yes.

Q. Did Consolidated purchase from that company?

A. Yes, we do.

Q. What type of products do they make?

A. They pack canned meats and fresh meats also, I believe.

Q. How much dollarwise did Consolidated purchase from Oscar Mayer and annually since 1953?

A. They pack strictly advertised brands and not too popular. I would say about ten to fifteen thousand dollars.

Q. Per year?

A. Per year, yes.

Q. That is River Grove?

A. That is right.

Q. Are you familiar with the Milwaukee Spice Mills?

A. I know of them.

Q. What type of products do they make?

A. I believe they pack spices and nothing else.

Q. Did Consolidated purchase from that company?

A. No purchases at all.

Q. As far as River Grove is concerned?

A. That is right.

628 Q. And are you familiar with Jewett and Sherman Company?

A. Yes.

Q. What type of products do they make?

A. They pack dressings, pickles, peanut butter, extracts, bluing, I believe, they pack a green olives. I suppose you would call them specialty packers.

Q. During the period 1953 to the present, did Consolidated purchase from that company?

A. Well, actually we purchased from, I believe, a subsidiary of theirs called Holsom Products.

Q. To what extent were those purchases, dollarwise, by year?

A. We purchased from them right along. I would estimate an average of about $150,000 per year. That might go up and down depending upon how actively they were promotionwise.

Q. That is also River Grove?

A. That is right.

Q. Are you familiar with the Lipton Tea Company?

A. Yes.

Q. What type of products do they make?

A. Tea, soup mixes. Now, they own the Wishbone Dressing Company.

Q. Are you familiar with purchases by Consolidated from that company?

A. Yes.

Q. Will you describe the nature and dollar amount per year?

629 A. Well, Lipton, as I believe every one knows, packs nothing but their own label merchandise Lipton brand teas and soups. Of course, at one time they had Arthur Godfrey plugging for them. I would say our purchases prior to the acquisition of Wishbone were about $150,000 a year.

Q. Since 1953?

A. Yes.

Q. That is River Grove?

A. That is right.

Q. Are you familiar with George A. Hormel Company?

A. Yes, I am.

Q. What type of products do they make?

A. Meat products.

Q. Canned meat products?

A. Yes. Well, I believe they are in fresh also.

Q. Did Consolidated purchase from that company?

A. For many years, oh, yes.

Q. What was the annual extent of those purchases, dollarwise?

A. I would say Hormel was fairly steady, probably around $100 [sic] a year.

Q. Since 1953 or before that?

A. I would say before that. They have been a supplier for many years.

Q. Are you familiar with Bedford Products Inc.?

A. Yes.

630 Q. What type of products do they make?

A. They pack jellies and preserves.

Q. Are you familiar with Consolidated purchases from that company?

A. Yes.

Q. Will you describe them dollarwise?

A. Well, Bedford again has been a supplier for many, many years. I would estimate our purchases in River Grove are probably around $100,000 a year steady. Bedford is now part of Kraft Foods, has been a couple years.

Q. Are you familiar with Les Pommiers Cannery?

A. Yes.

Q. What type of products does that company make?

A. I believe they pack canned soups only.

Q. Did Consolidated purchase from that company?

A. Yes.

Q. Private label or advertised?

A. Private label only.

Q. In what amounts?

A. Very, very small. I would say under $5,000 a year.

Q. Would it be more than $4,000?

A. Maybe some years.

Q. Was it at least $3,000 annually?

A. That is hard to say. He packs a specialty item and demand for French onion soup, for example, under pri-
631 vate label is very insignificant. You buck up against people like Campbell and Heinz. That is tough competition in soups.

Q. River Grove did not purchase more than $5,000 a year?

A. I don't think so.

Q. Are you familiar with the Bluepoint Company?

A. Yes.

Q. What type of products do they make?

A. Canned clams, clam chowder.

Q. Did they sell to Consolidated Foods?

A. Yes.

Q. Private label or advertised brands?

A. Private label.

Q. What was the extent of their sales?

A. We purchased approximately $20,000 a year from them up until a couple of years ago they were taken over by another company who was in the same field and at that time we switched over to this other company. So our sales in the last couple years or so have decreased with Bluepoint.

Q. Decreased to what point?

A. Oh, I would say approximately ten, twelve thousand dollars.

Q. You continue to buy from the successor of Bluepoint Company?

A. That is right.

Q. What is the name of that company?

A. Fred Fear Company.

632 Q. Are you familiar with the J. J. Gielow and Sons Company?

A. Yes.

Q. What type of products do they make?

A. Pickles.

Q. Did Consolidated buy from them?

A. Yes, they have been a supplier for many years.

Q. Private label or advertised brands?

A. Private label.

Q. What was the extent of the sales by that company to the Consolidated during the period that you know about?

A. Well, at one time we bought, I would estimate, around thirty, thirty-five thousand dollars worth of products from them. About three years ago they closed a plant they had in Georgia. That was located very ideally geographically for us and when they closed it, we had to seek other suppliers. I would say from that point on our purchases decreased to possibly $10,000 in the last year.

Q. Was it $30,000 did you say in 1951 or '53?

A. I would say around 30, 35.

Q. In 1951?

A. Yes, I would estimate so.

Q. Until they closed their plants?

A. About three years ago, that is right.

Q. Are you familiar with Receipe Foods?

A. Yes.

633 Q. What type of products do they make?

A. They pack dressings and juices of various types.

Q. Did they sell to Consolidated Foods?

A. In a small way, very small way.

Q. Was that private label or—

A. Private label, yes.

Q. Only?

A. Well, they have their own label, but we only bought private label from them when we did buy. They were usually not competitive.

Q. What were the extents of those sales to Consolidated?

A. As far as River Grove was concerned, I don't think we would average $1,000; $1,500 a year until about a year ago they became competitive on prune juice. I would say we possibly bought about $5,000 worth from them in the last year.

Q. Are you familiar with J. L. Read Foods?

A. Yes.

Q. What type of products do they make?

A. They make dressings and potato salad.

Q. Did they sell to Consolidated Foods?

A. Yes, for many years.

Q. Advertised brands or private label?

A. No, private label only.

Q. What was the extent of their sales to Consolidated Foods?

A. Oh, we were buyers of dressings from them to
634 the extent I would say of about $200,000 a year until about '54, '53, when they came out with canned potato salad. There was an extremely good item the first year. The second year it began slipping. Also about three years ago we began switching some of the dressing business to our own plant, so I would say our business with them the last three, four years has decreased.

Q. To what point?

A. Oh, I would estimate it today to be around $100,000.

Q. When you gave your $200,000 figures, I believe, was that in 1951?

A. No, that was—I would estimate in about '53 or '54 when they came out with this potato salad.

Q. Are you familiar with Grocery Store Products?

A. Yes.

Q. What type of products do they make?

A. They are principal — their principal products, I believe, is Foulds branded macaroni products.

Q. Do they sell to Consolidated Foods?

A. Yes, for many years, they are an old supplier.

Q. Advertised brands or private label?

A. Advertised brands.

Q. To what extent do they sell to Consolidated Foods?

A. About $30,000 a year stable, pretty even.

Q. For each year since 1951?

A. Yes.

635 Q. Are you familiar with the P. J. Ritter Company?

A. Yes.

Q. What type of products do they make?

A. They are canners of vegetables primarily. I believe that is their main business.

Q. Did they sell to Consolidated Foods?

A. I would say nothing up until about three years ago.

Q. Was that advertised brands that they sold or private label?

A. Private label.

Q. What was the extent of purchases?

A. About three or four years ago they came out with a new item, asparagus spears in glass. I would say we bought about $7,500 from them. Very few of our units use the item simply because of their geographical location.

Q. Has that figure remained the same, about $7,500 a year?

A. It has only been about three years, yes.

Q. Per year?

A. Yes.

Q. Are you familiar with the Woolson Spice Company?

A. Yes.

Q. What type of products do they make?

A. Spices.

Q. Did they sell to Consolidated Foods?

A. Not prior to 1956.

636 Q. Since 1956, what have they sold?

A. Well, in 1956 we closed our own plant that packed spices, and based on bids that we got we chose Woolson as our source of supply for private label spices.

Q. Do they sell any advertised brands?

A. They probably sell merchandise under their own label.

Q. But not to Consolidated?

A. No.

Q. What was the extent of your purchases from that company?

A. About $150,000 a year.

Q. Are you familiar with Joseph De Frates Company?

A. Never heard of them.

Q. Are you familiar with Moore and Company?

A. No.

Q. Are you familiar with the Rival Packing Company?

A. Yes.

Q. What type of products do they make?

A. They are packers of pet foods, dog food, cat food.

Q. Did Consolidated buy anything from that company?

A. Oh, yes, many years.

Q. Did they buy it private label or advertised brands?

A. Only advertised brands.

Q. To what extent did Consolidated buy those advertised brands?

A. On our purchases from them, I would estimate
637 are around $100,000 a year.

Q. For each year since 1951?

A. Yes, I would say so.

Q. Are you familiar with Blue Seal Foods?

A. Yes.

Q. What type of products do they make?

A. I believe all they pack is dressings.

Q. Do they sell to Consolidated?

A. Yes.

Q. To what extent?

A. Approximately $25,000 up until about a year ago. The decrease was due to the fact we switched some of our business to our own plant.

Q. Did they sell private label or advertised brands?

A. Private label, yes.

Q. That figure you gave was that an annual figure for each year since 1951?

A. Yes.

Q. Are you familiar with the Bluepoint Company, Inc.?

A. Yes.

Q. What type of products do they make?

A. I beg your pardon. I think you covered Bluepoint once before.

Q. Yes, that has already been covered.

Q. Are you familiar with F. M. Wilson Canning Company?

638 A. Yes.

Q. What type of products do they make?

A. They are a California canners of fruits and vegetables.

Q. Do they sell to Consolidated?

A. Yes.

Q. Private label or advertised?

A. Private label.

Q. What was the extent of Consolidated purchases from that company?

A. I would estimate approximately 150 to $200,000. You can get very wide fluctuations there on account of both price as well as supply.

Q. Is that a figure you gave applicable to each year since 1951 — did you buy that amount each year, approximately 150 to $200,000 a year?

A. I would say a minimum of $150,000, yes.

Q. For each year since 1951?

A. Yes, that is right.

Q. Your testimony, as I understand it, relates only to sales to Consolidated Foods, private label products, or advertised products bought by the River Grove division of Consolidated Foods?

A. That is right.

Q. In other words, other divisions may have purchased and likely did purchase products from these same com-
639 panies. Is that right?

A. That could very well be.

Q. When you referred in your testimony to private label, that is a label of Consolidated Foods?

A. It is a label that we own and control, yes.

Q. In a private label buying situation, does Consolidated — are the products made especially for Consolidated Foods?

A. Oh, no.

Q. What is the situation?

A. Well, a packer comes in with a product and offers it for our label. We determine, based on the products itself and then we delve into quality, price and the type of service he can give, whether or not we want to put our label on it.

Q. If you balance those factors and determine that they are favorable to you, do you, then, buy under that private label brand?

A. If we feel we can sell it, yes.

Q. All of the products that you have described are sold by Consolidated Foods. Is that correct?

A. Yes.

Q. And they are sold through their own retail outlets, some of them?

A. In River Grove we do not have any of our own retail outlets.

Q. Are they sold through your wholesale divisions?

640 A. That is right. They are sold through the River Grove wholesale division.

Q. Are you familiar with any of these companies, and the same type of information I have asked about the other companies? Alma Canning Company?

A. Yes.

Q. What type of business are they in?

A. Canned vegetables in the South. They are located in Arkansas.

Q. Do they sell to Consolidated Foods?

A. Yes.

Q. Private label or advertised?

A. Private label.

Q. How much did they sell to Consolidated Foods dollarwise?

A. I would estimate their peak was possibly about $100,000—oh, maybe three years ago. One of the important items we bought from them was canned white potatoes. Several years ago the Wisconsin packers became more competitive. As a consequence our purchases from Alma have decreased.

Q. Can you tell me the extent of those purchases in 1951?

A. No, I would not know.

Q. Would you know 1952?

A. No.

Q. And I believe '53—

A. In 1953 I came into this office. Yes.

641 Q. Would it be approximately the same for each year since 1953?

A. I would estimate the same, yes.

Q. Are you familiar with Jay Freeman and Company?

A. No, I am not.

Q. Are you familiar with Omega Food Products?

A. No, never heard of them.

Q. Macyclin Sales Company?

A. No.

Q. McLean Frozen Pies?

A. No.

Q. Gino Corporation?

A. No.

Q. Henderson's Portion Pack?

A. No.

Q. National Brands?

A. No.

Q. Dixie Lily Milling Company?

A. No.

Q. Nelson Brokerage Company?

A. No.

Q. Elbeck Milling Company?

A. No.

Q. American Frigid Dough?

A. I know of them.

642 Q. Do you know about any sales to Consolidated Foods by that company?

A. No. I believe they were packers of frozen products and our office does not get into frozen foods.

Q. Are you familiar with the Capitol Food Company?

A. No.

Q. Great China Food Products?

A. Yes.

Q. What type of products do they make?

A. They pack canned chop suey products.

Q. Did they sell anything to Consolidated Foods?

A. Yes.

Q. Private label or advertised label?

A. Mainly private label.

Q. What was the extent of those sales?

A. Oh, I would estimate that we bought between 10 and $15,000 from them annually.

Q. Since 1951?

A. '53.

Q. Are you familiar with Aurora Frozen Foods?

A. There again, I believe they are part of Michigan Mushroom.

Q. Are you familiar with Vevco Foods?

A. No.

Q. Terry Foods?

A. No.

643 Q. Morgan Packing Company?

A. Yes.

Q. What type of products do they make?

A. Canned dry-pack merchandise, pork and beans, kidney beans, items of that nature.

Q. Did they sell anything to Consolidated Foods?

A. Yes.

Q. Private label or advertised brands?

A. Private label.

Q. What were the extent of those purchases?

A. There again, those purchases might rise erratically or fall drastically depending upon crop conditions and supply. They are the kind of outfit if they decide to sell something they will cut the price very much. Our purchase in any one year from them, I would say, could range from 100 to $150,000 a year.

Q. That would be true for each year since 1951?
A. Yes.
Q. Are you familiar with Midwest Food Packers?
A. I believe that is an Indiana packer.
Q. Fowlerton, Indiana?
A. Yes.
Q. What type of products do they make?
A. I believe they can only tomato products.
Q. Did they sell anything to Consolidated Foods?
A. We may have purchased, but it would be very
644 little. There again, like Lake Odessa, if the price was right we might have bought from them.
Q. Would that be private label or advertised?
A. Private label.
Q. Are you familiar with Gibbs and Company?
A. Yes.
Q. What type of products do they make?
A. Canned vegetables and specialty items.
Q. Did they sell anything to Consolidated Foods?
A. I don't think so.
Q. Are you familiar with Manischewitz Food Products?
A. Yes.
Q. What type of products do they make?
A. I believe they pack Jewish specialty items.
Q. Did they sell anything to Consolidated Foods?
A. No.
Q. Are you familiar with American Home Foods?
A. Yes.
Q. What type of products do they make?
A. Canned specialties, primarily Italian foods.
Q. Did they sell anything to Consolidated Foods?
A. Yes.
Q. Private label or advertised?
A. No, advertised brands.

Q. What was the extent of their sales?

645 A. We purchased from them approximately $75,000 a year average, and I would say the sale of their products increasing because of the increasing demands for Italian foods.

Q. Is that approximately $75,000 a year for each year since 1951?

A. I would say it was less in '51.

Q. But approximately $75,000 for each year thereafter?

A. Yes.

Q. Are you familiar with Moore and Company of Newark, New Jersey?

A. No.

Q. Are you familiar with the Beechnut Packing Company?

A. Yes.

Q. Do they sell anything to Consolidated Foods?

A. Yes.

Q. What type of products do they make?

A. Baby foods.

Q. Did they sell private label or advertised label?

A. No, their own brands.

Q. What were the extents of their sales?

A. Oh, they are not quite as popular in this market as Gerber. I would estimate our purchases from them are approximately $100,000 annually.

Q. Is that for each year since 1951?

A. I would estimate it, yes.

646 Q. Are you familiar with Croyden House Foods?

A. No.

Q. Are you familiar with the Bluepoints Division of General Foods Corporation?

A. No.

Q. La Fayette Packing Company?

A. No.

Q. Leigh Food Products?

A. No.

Q. Fred Mushroom Products?

A. Yes.

Q. Did they sell anything to Consolidated Foods?

A. I don't think we bought anything from them except we may have bought a little from them last year.

Q. What type of products do they make?

A. Canned Mushrooms.

Q. Do they sell advertised or private label goods to Consolidated?

A. Private label.

Q. What were the extent of those purchases?

A. Oh, I would estimate $2,000; maybe $1,500. We only bought one item from them.

Q. Are you familiar with Hunt Foods of Ohio?

A. Yes.

Q. Did they sell anything to Consolidated Foods?

647 A. Yes.

Q. What type of products do they make?

A. When you say Hunt Foods of Ohio, I believe in Ohio they pack only catsup.

Q. Do they have other subsidiary corporations known as Hunt Foods?

A. Hunt Foods are large packers of canned fruit and vegetables on the West Coast.

Q. Do they sell anything to Consolidated Foods?

A. Yes.

Q. What was the extent of Consolidated's purchases from the Hunt Foods on the West Coast as well as Ohio and other subsidiaries?

A. I would say until the last two years their sales to us were rather negligible considering the size of the company, considering the size of Hunt. Within the last two, three

years, again because of our increased activity in the voluntary field, I would say they have increased.

Q. What type of sales, private label or advertised?

A. No, advertised only.

Q. What was the dollar extent of those sales?

A. Oh, I would estimate last year we purchased about 35, $40,000 from them.

Q. Was that true the year before that?

A. I would say the year before was possibly 10 per cent less.

648 Q. That would be 1957?

A. Yes.

Q. Did you purchase before that?

A. Yes.

Q. In what amounts?

A. Oh, I would estimate 15 per cent less. Possibly 20, $25,000 in that year.

Q. For each year preceding would that be the same?

A. I think that would be a fair estimate, yes. They are extremely heavy advertisers of their products and you have to have them.

Q. You referred in your answer to the voluntary field. What do you mean by that?

A. We have a group of stores that we sponsor. In other words, they treat us as their primary source of supply in return for a fee, which they pay to us. We advertise for them, we sell them merchandise at a fixed percentage over cost; similar to I.G.A. or Certified, or Central Grocers here in Chicago.

Q. Are you familiar with Manning, Inc.?

A. No.

Q. Jacksonville Milling Company?

A. No.

Q. Barra Frozen Products?

A. I assume that is the Barra in River Grove. I know of them.

649 Q. Do they sell anything to Consolidated?

A. No.

Q. Tone Brothers?

A. No.

Q. Mother's Foods, Inc.?

A. No.

Q. Are you familiar with Boullo Food Products?

A. No.

Q. Are you familiar with the Hoger Corporation?

A. No.

Q. Wagner Bros?

A. No.

Q. Mr. Hays: May we have five minutes, Your Honor?

Hearing Examiner Kolb: Recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Hays:

Q. Are you familiar with Cudahy Packing Company?

A. Yes.

Q. Do they sell to Consolidated Foods?

A. Yes.

Q. What type of products do they make?

A. Canned meats and I believe fresh meats also.

Q. Do they sell to Consolidated private label or advertised brands?

650 A. Now, which Cudahy is this? I believe there are several Cudahys.

Q. I have reference to the Cudahy Packing Company, Phoenix, Arizona.

A. No, I don't know a Cudahy in Arizona.

Q. What Cudahy companies are you familiar with?

A. There is a Cudahy in Wisconsin.

Q. That is the Company that sells to Consolidated Foods?

A. Yes.

Q. Advertised brands or private?

A. Private label.

Q. What was the extent of their sales?

A. Oh, about the only item we buy from them, I believe, is dried beef. I would say somewhere between five and eight thousand dollars a year.

Q. For each year since 1951?

A. 1953.

Q. '53?

A. Yes.

Q. I asked you about this company before, I believe, in Milwaukee, Spice Mills.

A. Yes.

Q. Are you familiar with it at all?

A. I know of the company, yes.

Q. Do you know the type of products they make?

651 A. Well, from the name I would assume it is strictly spices.

Q. You know nothing about their type of operation other than what you just said?

A. That is correct.

Q. Did I understand that all private label purchases of Consolidated Foods or its subsidiaries are handled through you. Is that correct?

A. No, that is not correct.

Q. What other divisions engage in buying private label merchandise?

A. Our office sets up an authorized souce of supply for private label merchandise for the entire company. Once that is done, each division or unit has the option of either sending the order to us for us to place or they can order directly from that authorized source of supply.

Q. Insofar as your testimony with reference to the

dollar volume of sales is concerned, did that include instances where the division went to the source, authorized source of supply and bought from it?

A. No, that was only River Grove's purchases.

Mr. Hays: That is all I have. Cross examine.

Cross Examination

By Mr. Walker:

Q. On this last point, so the record will be clear, would the amounts which you gave, where you testified to
652 dollar amounts, include amounts for private label merchandise that you bought for other distributing units?

A. No, it would not include purchases that we might have made for other units.

Q. So the dollar amounts you gave covered only purchases for yourself at River Grove?

A. That is right.

Q. There are, I believe, Mr. Lerner, some minor instances where you do supply some advertised brands to other units of Consolidated?

A. From the River Grove operation?

Q. From the River Grove operation?

A. That is right.

Q. And the amounts of these goods were included in the dollar amounts to which you testified, is that right?

A. That is right.

Q. These are very small shipments. Would you describe the nature of these, please?

A. The River Grove warehouse acts as, you might say, a supply depot whenever any of the other units wants it to be a supply depot. So if they came to us for any products, we would furnish it to them from the River Grove inventory.

Q. But that happens only occasionally and those are in small amounts. Is that right?

A. That is right.

Q. Would you describe in a little more detail, please,
653 Mr. Lerner, how you go about making up this list of private label suppliers that are approved?

A. We try to stay with suppliers that we feel sure will give us the quality we want for our various labels. Service is very important because in these days of turnover we want to turn our merchandise as much as possible, so service is very important, of course, and prices are factors also. But service, I would say, is almost as important as quality because today with most stores being self-service, Mrs. Housewife has the choice of picking what she wants. Therefore, you have to have the merchandise there when she wants it.

Q. In some cases I was not sure from your testimony, Mr. Lerner, whether you were saying you were not familiar with the company or did not purchase from it. Do I understand that as to the following named companies, to the best of your knowledge, you do not purchase from them: Joseph De Frates, Indiana Mushroom, Milwaukee Spice Mills, Moore and Company. Is that correct?

A. We do not purchase from them. The only exception being Indiana, who is a part of Michigan Mushroom, but as such we have never purchased from them, or any of those other names.

Q. You have never purchased, to the best of your knowledge, from any of those named companies?

A. That is right.

Q. I want to repeat the same question with another
654 list of companies and ask you whether it is true that to the best of your knowledge, you, that is River Grove, have never purchased from these companies? Freeman and Company, Omega Food Products, Mayclin Sales Company, McLean Frozen Pies, Gino Corporation, Henderson's Por-

tion Pack, National Brands, Dixie Lily Milling Company.

A. We never purchased from them.

Q. I will read another group: Nelson Brokerage Company, Elbeck Milling Company, American Frigid Dough, Capitol Food Company, Vevco Foods, Terry Foods, Gibson Company. What about those?

A. Never purchased from them.

Q. Croyden House Foods, La Fayette Packing Company, Leigh Food Products, Fred Mushroom Products, Jacksonville Milling Company, Tone Bros. Foods, Mother's Foods, Boullo Food Products, Hoger Corporation, Wagner Bros.

A. With the exception of Fred Mushroom from whom we made one or two small purchases, we have not purchased from any of the other companies.

Q. To what extent, if at all, Mr. Lerner, is private label buying affected by promotion of advertised brands?

A. The private label buying is not affected, but the sale is very much affected. If the advertised brands come out with a heavy promotion, as, for example, Snyder did recently on catsup we don't sell very much private label
655 catsup, because of the heavy advertising they put behind it and promotions, they will take the play away from private label brands.

Q. Over a period of the last ten years, Mr. Lerner, has there been any change in regard to the factors taken into consideration in your selection of private label suppliers for the Monarch and Richelieu brands?

A. Oh, yes.

Q. Would you, please, describe what that change has been?

A. I would say that years ago the Monarch and Richelieu labels, while they are still well known today, at that time come into the premium at the retail level, commanding

a premium at the retail level we could afford to pay a little more for them and possibly we might have purchased the same products from other suppliers. But today, with most stores self-service and there is no salesman in the retail store to push private labels or any other products they might want to push, the selection of merchandise is entirely at the discretion of Mrs. Housewife. So, therefore, we found it necessary to become much more competitive in our purchasing. We could not afford to overprice our product at the retail level, so we have to become very much more diligent in getting as good a price as we could, quality and service considered.

Q. This trend has been going on since 1950?

A. I would say approximately nine, ten years, since the advent of super markets and self-service.

656 Q. To the best of your knowledge, did you purchase, and by you in all of these questions, I mean River Grove, products from American Home Foods prior to 1950?

A. Of course, River Grove was not in operation prior to 1950.

Q. The predecessor units of River Grove?

A. Yes. Oh, yes.

Q. What would you estimate, Mr. Lerner, are the total sales of American Home Foods?

A. I would estimate their total sales are somewhere around 350, $400,000,000, I would guess.

Q. Did River Grove or its predecessor units purchase from Armour and Company prior to 1950?

A. Yes.

Q. What would you estimate the total sales of Armour and Company at?

A. They are very big. I would say a couple billion dollars.

Q. Couple billion dollars?

A. Billion, billion.

Q. Did River Grove or its predecessor units purchase from Bedford Products prior to 1950?

A. Yes.

Q. What would you estimate the total sales of Bedford at?

A. Oh, I would estimate their total sales at probably hundred million dollars.

Q. The Blue Seal Foods, Mr. Lerner, did River
657 Grove or its predecessor units purchase from this company prior to 1950?

A. Yes.

Q. What would you estimate their total sales?

A. Oh, I would guess a million, million and a half possibly.

Q. Did River Grove or its predecessor units purchase from Custom Foods prior to 1950?

A. Yes.

Q. Did River Grove or its predecessor units purchase from Gerber prior to 1950?

A. Yes, definitely.

Q. What would you estimate the total sales of Gerber at, Mr. Lerner.

A. I would say over a hundred million dollars.

Q. You testified, Mr. Lerner, I believe, perhaps I am wrong, that there may have been some slight increase in the purchases that you know of from Gerber. Do you know any explanation for that increase?

A. Yes, I would say based on the increase in the number of babies in the last—well, post-war, plus the fact that all baby food companies have come out with many new products. In fact, just last week I read in one of the trade papers where 33 cents out of every dollar spent in the super market today is for a product that did not exist ten years ago. That gives you an idea of the number of new products.

Q. J. J. Gielow and Sons, did River Grove or its
658 predecessor units purchase from them prior to 1950?

A. Yes.

Q. At what level would you estimate their sales total?

A. I would estimate ten million dollars.

Q. Grocery Stores Products, did River Grove or its predecessor units purchase from them prior to 1950?

A. Yes.

Q. How much would you estimate their sales?

A. Their advertised brands, I would estimate about $15,000,000.

Q. The George A. Hormel and Company, was this a pre-1950 supplier?

A. Yes.

Q. At what level would you estimate their sales?

A. I would estimate theirs at somewhere around three-quarters of a billion.

Q. Three quarters of a billion?

A. Billion, yes.

Q. Jewett and Sherman or Holsom Foods, I believe you identified them as, did River Grove or its predecessor units purchase from them prior to 1950?

A. Yes.

Q. At what level would you estimate their sales?

A. I would say 15 to 20 million.

Q. Do you have any opinion as to the total sales of Lake Odessa Canning Company?

659 A. I would say several million, maybe three, four million.

Q. And total sales of Thomas J. Lipton and Company?

A. I would estimate in excess of a hundred million dollars.

Q. Did River Grove or its predecessor units purchase from Lipton prior to 1950?

A. Definitely.

Q. Do you recall about when Lipton started promoting heavily its dry soups, Mr. Lerner?

A. That probably began with Arthur Godfrey, with chicken running through the batch of soup. I would guess about seven, eight years ago.

Q. You mentioned dressings by Thomas J. Lipton and Company. What dressings were those?

A. They purchased the Wishbone Dressing Company about a year, year and a half ago.

Q. Some of your purchases have been of these Wishbone dressings?

A. Oh, yes, sir, advertised products.

Q. Oscar Mayer and Company, did River Grove or its predecessor units purchase from them prior to 1950?

A. Yes, we did.

Q. At what level would you estimate are their total sales?

A. I would estimate $250,000,000.

Q. What would you estimate the total sales of Michigan Mushroom Company?

660 A. They are heavy suppliers of fresh mushrooms to Campbells. I would estimate somewhere around eight to ten million dollars.

Q. What would you estimate are the total sales of J. L. Read Foods?

A. They are particularly private label. I would say possibly $5,000,000.

Q. Did River Grove or its predecessor units purchase from J. L. Read prior to 1950?

A. I believe they did.

Q. Receipe Foods, Mr. Lerner, at what level would you estimate are their total sales?

A. I would say under $10,000,000.

Q. What would you estimate are the total sales of P. J. Ritter and Company?

A. I wouldn't want to venture a guess on them. I am not too familiar with them.

Q. Rival Packing Company, did River Grove or its predecessor units purchase from them prior to 1950?

A. Oh, yes.

Q. Would you have any estimate as to the total sales of Rival Packing Company?

A. I would say around $10,000,000.

Q. Did R.G. or its predecessor units purchase from Venice Maid Company prior to 1950?

A. Yes.

661 Q. What would you estimate are Venice Maid's total sales?

A. I would say five to seven million dollars possibly.

Q. Did River Grove or its predecessor units purchase from Wass Food Products prior to 1950?

A. Yes.

Q. Would you have an estimate as to their total sales?

A. I would say about five million dollars.

Q. Did River Grove or its predecessor units purchase from F. M. Wilson Canning Company prior to 1950?

A. Yes, we did.

Q. At what level would you estimate their total sales?

A. I would say around four million dollars, three and a half, four million dollars.

Q. At what level would you estimate are the total sales of Woolson Spice Company?

A. I would say in excess of $15,000,000.

Q. Did River Grove or its predecessor units purchase from Wyler and Company prior to 1950, Mr. Lerner?

A. Yes, I think so.

Mr. Walker: No further questions.

Redirect Examination

By Mr. Hays:

Q. You have given a number of estimates with reference to total sales of these various companies. What is the basis for those estimates? What is your position that you
662 are able to estimate those sales?

A. Oh, based on figures seen in trade papers or number of cases that estimated packed.

* * *

Q. With reference to your estimates insofar as sales by these companies to Consolidated Foods is concerned, what is the basis for these estimates?

A. Talked to my buyers and got figures from our records. We handled in the River Grove building, Mr. Hays, approximately 8,500 items. So it would be pretty hard for me to be familiar with the purchases of 8,500 different items.

663 Q. You are in day to day contact with the source of information upon which your estimates is based with reference to sales by these concerns to Consolidated Foods?

A. I am located in the same office with our buyers. Is that what you mean?

Q. Yes.

A. Yes.

Q. You have ready access to records, do you not?

A. Records are available, oh, sure.

Q. Records with reference to sales by those companies to Consolidated Foods?

A. For River Grove, yes, that is right.

Q. The basis for your estimates as to the total sales of these companies is information contained in trade papers. Is that correct?

A. Trade papers and in some instances talking casually with their representatives.

Q. With reference to these companies that you have named and given estimates concerning their total sales, is it not true that many of these companies have a number of divisions?

A. Well, undoubtedly some of them have divisions, but, without going back over the names, offhand I wouldn't know how many.

Q. Is it not true many of them have subsidiary corporations that are autonomous from its parent in selling and buying?

664 A. It is possible, sure.

Q. That is the characteristic of the foods business, is it not, the type of operation you have in Consolidated Foods with a great deal of authority delegated to divisions and subsidiaries?

A. You are talking, now, of our suppliers?

Q. Yes.

A. Again, I say the instance of Lipton, for example, I don't think they had a subsidiary. Again, you would have to go over each one name by name. It is possible some of them do.

Q. Don't all of them have separate sales offices?

A. Again, it depends on the company. Some of them operate from one office. In the instance of Armour and Company, for example, who operates, as far as I know, under one name, they have a separate sales force for meats, they have a separate sales force for certain soap products.

Q. George Hormel has a number of branches that are autonomous, does it not?

A. I believe they have branches at various points but what their method of operation is I don't know.

Q. In other words, is it not true that you know very little about the operation of these companies other than their total sales?

A. That is right.

Q. And that information on total sales was gained through trade papers and casual acquaintances. Is that right?

665 A. Casual conversation with their representatives.

Q. With reference to these companies wherein you have given the estimate of total sales, can you give me a further estimate with reference to the total sales by these companies to retail stores and chains, and the total sales with reference to wholesalers, sales to wholesalers?

A. No. Any figures I have seen I doubt they were broken down that finely.

Mr. Hays: That is all I have, Your Honor.

* * *

666 EARL HEITGER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Will you state your name and address and place of employment.

A. Earl Heitger. I am employed by the Monarch Finer Foods Division of Consolidated Foods Corporation. My address is 315 Filippi Road, Columbus, Ohio. That is my business address.

Q. How long have you been employed in this
667 Monarch Finer Foods Division?

A. Ever since the Monarch Finer Foods Division has been in being.

Q. How long has that been, sir?

A. That is since the same was changed in — I can't give you the exact year. I have been with Consolidated Foods for 19 years altogether.

Q. Has the Monarch Finer Foods Division been in existence since 1950?

A. Yes, sir.

Q. You were with that division in 1950?

A. Yes, sir.

Q. Will you describe your position at that time and any changes that have occurred since then?

A. I will go back the other way. I am Manager, now. I have been manager for four years. Prior to that I was Assistant Manager for four years approximately, and before that I was salesman for nine years.

Q. Who is your immediate superior?

A. Mr. S. M. Kennedy, President of Consolidated Foods Corporation.

Q. There are no intervening individuals to whom you report in the chain of command or to whom you are responsible?

A. No, sir.

Q. What is the Monarch Finer Foods Division?

668 A. We are a wholesale grocery selling to retail outlets.

Q. What retail outlets do you sell to?

A. We sell to independent retail stores, we sell to institutional users and we also sell to a voluntary group known as the Royal Blue stores.

Q. These Monarch Finer Foods, do you deal exclusively in the Monarch brands?

A. No, sir, we handle both private label and advertised brands.

Q. The Monarch brand is a private label of your company. Is that right?

A. Yes, sir, that is right.

Q. Will you describe the manner in which purchases are made by your division?

A. Purchases are made in several ways. One, we purchase through the brokers who call on us. We also purchase

by sending an order in to our Chicago buying office, and also into our West Coast buying office.

Q. When you say your Chicago buying office, do you refer to the office under Mr. Lerner?

A. Yes, sir.

Q. You have heard him ask Mr. Lerner a number of questions with reference to the amount of purchases from various concerns?

A. Yes, sir.

Q. For the purpose of my series of questions, will
669 you understand that when I ask for figures I would like figures of sales other than those which Mr. Lerner has referred to?

A. Yes, sir.

Q. In other words, I do not want to get any duplication. I do not want him to be saying $15,000 worth of sale and you to say $20,000 and included is $15,000 in there.

A. The figures I give you will be for Columbus.

Q. Not through the Chicago office.

A. Yes, sir.

Q. Or the West Coast office?

A. This will be through the West Coast office. Some of my purchases will be items which I have ordered there and have come into Columbus.

* * *

Mr. Hays: With reference to the figures that are to be given by the various witnesses, Mr. Walker has a statement to make with reference to them that will clarify the combination of figures.

Mr. Walker: I only wish to say in response to Mr. Hays' question, which I understand was "is there any overlapping?". As I understand, there is no overlapping. The figures that are given by each one of the witnesses will
670 be exclusive of figures given by all other witnesses.

Mr. Hays: Thank you.

By Mr. Hays:

Q. Will you describe the annual purchases from 1951 to date, by your division from Wyler and Company?

A. I am familiar with 1954 on, as you can see, as I was General Manager from 1954 on and have only general knowledge before '54. It would not be as much knowledge as since '54. I have some knowledge of it, however.

• • •

By Mr. Hays:

Q. I understand that you are personally familiar with purchases by Monarch Foods since 1954 and you are also in a position to make estimates with reference to the years 1951 through 1953?

A. Yes, sir, I have talked to various of my buyers and also checked with them and checked back what records we have, and this is the testimony which I will give you.

• • •

By Mr. Hays:

671 Q. Will you describe the amount of sales by Wyler and Company to Monarch division?

A. To the best of my knowledge, Wyler and Company we do not buy from at Columbus.

Q. Will you describe the sales by Custom Foods to Monarch Division?

A. Best of my knowledge we do not buy from Custom Foods at Columbus.

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By Mr. Hays:

Q. I understand your testimony dealt not with the Monarch Division but the Monarch Division at Columbus, Ohio?

A. That is right.

Q. Did Wass Food Products sell anything to Monarch Division at Columbus?

A. Yes, sir. We purchased about $250 in 1958. We had purchased some previously. We had purchased somewhere in the neighborhood of $1,500 and our purchases are down from them primarily due to the activity and increase of

various types of barbecue sauces. We do handle more than one, and it is down some.

Q. What was the—what figure can you give for the year 1951?

672 A. I can not give you a figure for 1951.

Q. Can you give me any figures for 1952?

A. No, sir.

Q. When you referred to $2,000 a year, were you referring to—

A. Best of my knowledge, it was in '53, '54, and this is again from talking to the buyer, saying they were buying somewhere in the neighborhood of $1,000, and in '58 we purchased $250.

Q. In 1953, then, you purchased approximately $1,000?

A. I didn't say '53. I said roughly '53 or '54.

Q. A thousand dollars in 1953?

A. Yes.

Q. And $1,000 in 1954?

A. No, sir, I can't give you those exact figures.

Q. What were they for 1954?

A. I can not give you that figure.

Q. Can you give an estimate?

A. An estimate would be around $1,000.

Hearing Examiner Kolb: For two years or one year?

The Witness: That is for the one year.

By Mr. Hays:

Q. Can you give an estimate for 1955?

A. No, sir, I can not. An estimate?

Q. Yes.

A. Yes, I can give an estimate.

673 Q. What was that?

A. I would say in 1955, we purchased somewhere in the neighborhood of $750 to $800.

Q. What about 1956?

A. I do not know. I do not have that figure.

Q. What about 1957?

A. I can not give you a figure on that. I do not have—in talking and preparing these figures, I did not come prepared to give you each year. I mean, in buying records, we do not keep an exact record of everything in buying. Now, it is not required. We do keep our files and there are various office girls that may at times go into the files, pick out an invoice and possibly one could have been mislaid or something like that. And we also have recently completed a move into a new warehouse and in the moving there could have been a file or invoice mislaid, and for me to give you exact figure for every year, I did not come prepared to give you an exact figure for every year. Only estimates which were taken from the buyers and also were taken from the records which we have available.

Mr. Walker: Excuse me. Can I interrupt here because I think it is important that you know, Mr. Hays and the Hearing Examiner, the instructions that I gave to each one of these witnesses. This was based on what you asked me for, Mr. Hays, and what the witnesses told me was available in their units. We have tried to get for you,
674 wherever we could, the most, certainly the most recent volume of purchases because this is obtainable from the records, 1958. All of these witnesses can tell you what their purchases were from 1958 from every one of these companies. I asked them also to get some idea of the trend over the years. If they could say from talking to their buyers and taking a glance at such records as they had, whatever they were, that the trend was about so many thousand dollars per year as Mr. Lerner testified, then they will know that. If there are, and this is true as to many if not most of these companies and units, which had fluctuations, most of these gentlemen will not be able to tell you what their purchases were in any particular year. They will be able to tell you that there were wide fluctuations.

They will be able to give you an estimate of about how high it went, and they will be able to give you 1958 figures. But because there are no records available to do a complete job, this is the best we can do. And, of course, I should say that the status of the records will vary widely from unit to unit.

By Mr. Hays:

Q. Mr. Heitger, when you said you had no figures, do you have any estimates for 1956?

A. No, sir, I do not have an estimate. Only you are asking me for an estimate from my mind and I do not have that estimate. Only by talking to them, and what you might estimate here.

Q. In other words, for 1956 you have no figures and 675 you can not make an estimate.

A. Yes, sir, I can in some of these instances. On Wass I can not. I am not too familiar with that. It was an item I was not buying. As a General Manager, we do not have a detailed description of each one of these. Some of them, however, we are more familiar with than others.

Q. With reference to the Wass for the year 1957, do you have any figures?

A. I do not have a figure but my estimate would be somewhere in the neighborhood of $1,000 to $1,500 as I testified previously. This is based on talking with one of my buyers.

Q. 1958 what is your estimate?

A. My 1958 is very close estimate because we do have the records on that, and it was around $250.

Q. Did you purchase advertised things or private label products?

A. Advertised products.

Q. Any of your purchases by Monarch Division at Columbus, purchases of private label products?

A. You say do we purchase private label?

Q. Yes.

A. Yes.

Q. Are you familiar with Armour and Company?

Mr. Walker: Was that last question in relation to
676 Wass or was it generally?

Mr. Hays: Generally.

Mr. Walker: Very well.

By Mr. Hays:

Q. Are you familiar with Armour and Company?

A. Yes, sir.

Q. Did Monarch Division of Columbus buy anything from Armour?

A. Yes, sir, we did buy from Armour.

Q. To what extent?

A. In 1958 we purchased approximately $100,000. We purchased that through a local representative that they have.

Q. Did you make any purchases in the previous years back in 1951?

A. Yes, sir. In talking to the buyers, our previous purchases this was an increase from our previous years. I mean this amount of $100,000. One thing that I would like to say at this point if I may, at Columbus we have four years ago initiated a voluntary group. Also we started promoting aggressively and my sales have increased from somewhere in the neighborhood of eight to nine million dollars in the last seven, eight years. Last year we did in excess of $15,000,000. So any answers which I give you on any of these increases, I would like for you to note that
677 our sales have, in Columbus, have increased from approximately nine to ten million dollars to over fifteen million dollars.

Q. Can you give me an estimate as to the amount of

purchases by Columbus Division of the Monarch Division at Columbus for the year 1951 for Armour and Company?

A. 1951?

Q. Yes.

A. I can not give you the figures, sir.

Q. I asked for an estimate. Can you give me an estimate?

A. No, sir, I could not give you an estimate on that one, 1951.

Q. Can you give me an estimate for the year 1952?

A. No, sir, not 1952.

Q. Can you give me an estimate for the year 1953?

A. No, sir.

Q. Can you give me an estimate for the year 1954?

A. I would say in 1954, this would be only an estimate in talking to the buyers, that in 1954 we probably purchased somewhere in the neighborhood, and looking only at the figure of $100,000 and projecting back because of increase in volume and increase in sales, that we probably purchased somewhere in the neighborhood of $80,000.

678 Q. Can you give me an estimate for the year 1955?

A. Based upon all the other testimony, or all the other reasons I gave there I would estimate there it could have possibly climbed to $90,000.

Q. Can you give me an estimate for 1956?

A. You have to use a ratio and that would be the same thing.

Q. Twenty thousand more?

A. Up to the $100,000 figure in 1958.

Q. In other words, somewhere between $100,000 and $80,000 for 1957?

A. It could not exceed $100,000, because $100,000 is actually the top figure which I quoted in 1958 as far as I can recollect.

Q. It would not be less than $80,000 for 1957, would it?

A. Based on a ratio it would not appear to be.

Q. You consider the ratio to be a proper one, do you not, based upon your increased sales?

A. Do I consider what, sir?

Q. You considered the ratio to be a proper one, did you not?

A. I don't know what the ratio would be. I am only giving my opinion.

Q. You talked about a ratio. What do you mean?

679 A. It looks like our sales would increase from that. But I am giving you an estimated figure and what that could be I could not tell you.

Q. So for 1957 your estimate is based upon your experience and talking with buyers would be that you purchased somewhere between $80,000 and $100,000 from Armour and Company. Is that right?

A. Yes, sir. In that range.

Q. Did the Monarch Division at Columbus purchase anything from the Michigan Mushroom Company during the period 1951 to the present?

A. According to the records and talking to the buyers, in 1955 we purchased about $1,800.

Q. Is that all?

A. That is all we could find.

Q. You could not have any information to give an estimate as to any purchases in the other years? As far as you know on the basis of records and your knowledge, that is all the purchases during that period?

A. That is right, sir.

Q. Did the Monarch Division at Columbus purchase products from Indiana Mushroom Corporation during the period January 1, 1951, to the present?

A. To the best of my knowledge we did not purchase anything from them.

680 Q. Did the Monarch Division at Columbus purchase during the period 1951 to the present any products from Gerber Baby Foods?

A. Yes, sir. Our purchases in 1958 represented about $60,000 which we bought from a local representative, which was an increase over previous years. However, we had a slight decrease in '58. I should say the '58 figure was a slight decrease and this was due, we feel, primarily to Heinz, which is one of our primary baby foods and have done a lot of promoting, aggressive promoting in our market. We have purchased from them, however.

Q. Do you have records or can you give an estimate for each of the years from 1951 to the present?

A. Not a detailed estimate, no, sir.

Q. Can you give any kind of estimates?

A. I gave you a trend as far as our sales were concerned. It was a slight increase over the year due to our increase in volume but there was a slight decrease, as I say from our record in '58, which I gave you the detailed amount.

Q. You have given me '58, have you not?

A. Yes, sir.

Q. And you have referred to a trend?

A. That is right.

Q. How long did this trend cover?

681 A. This trend would cover the last four years which I am familiar with.

Q. That would be 1954 was when the trend started?

A. Yes, sir.

Q. Can you give an estimate as to the amount of sales by that company to the Monarch Division at Columbus in 1954?

A. I can give you the trend but I can not give you figures. The trend was up from 1954 through 1955, through 1956 up to 1957, the sales were increasing on the trend. Then, of course, they did decrease in 1958 for reasons given.

Q. What was the bottom figure that the trend started

at. That is what I am trying to get at. Was it nothing or $50,000?

A. I can not give you a definite figure.

Q. I am not asking for a definite figure. I am asking for an estimate.

A. An estimate based on my — I would not attempt to give you a figure.

Q. Do you have any knowledge of any sales in 1954 by Gerber?

A. Yes, sir, we have bought from Gerber all along. I mean, we have bought back through as far as I know, we bought back through the '51 or '49 period you referred to.

Mr. Walker: I cannot hear you.

682 The Witness: I say far as I know we have purchased from 1951 on, or we have purchased back through the years you are referring to. I am saying this through the fact that being a salesman on the road I would know the products which we were selling and we were selling to the best of my knowledge Gerber produc[redacted] at that time.

By Mr. Hays:

Q. Do you have any estimate as to the sales in 1956 by this company to your Monarch Division in Columbus?

A. Not in dollars and cents, only the trend which was an increase.

Q. Can you give me a percentage figure? How much of an increase was it, or anything of that kind?

A. No, sir, I don't have a figure. I would presume it would be in the same ratio as our own business increase, due to the fact that we sell all of our merchandise from a catalog and this catalog is put out to the grocer. The grocer orders from the catalog, and in his ordering from the catalog he selects what he wants to purchase in relation to his sales. So, therefore, my presumption would be the same ratio he is selling Gerber baby food to the consumer public is the way he would be buying it from us.

Q. What is the ratio?

A. That would be impossible for you or I to deter-
683 mine either one.

Q. How do you know it is the same?

A. Because he buys what he can sell. And I could not give you a figure. I would only be giving you a figure which would be dreamed up.

Q. In other words, you do not know the ratio?

A. No, sir.

Q. At which your over all sales increased?

A. I can not give you my sales figure for each year. That could be a matter of record if it was wanted to be produced.

Q. I asked you if you could give me the ratio. I mean, you have been referring to ratio and I assume you know what the ratio of your sales is. Do you?

A. No, sir, I do not. I mean, I don't know the total amounts for each year.

Q. Do you have the figures for '57?

A. You mean our sales in '57?

Q. Yes.

A. I don't have them with me. Approximately fourteen and a half million.

Q. What were they in 1958?

A. 1958 were over fifteen million.

Q. They increased?

A. Roughly $1,000,000.

684 Q. Was that same increase true over '56 over '55?

A. '56 over 55 I would judge was somewhere in the neighborhood of—I believe it was a million and a half. I can not give you exact figures, sir.

Q. What was it between '55 over '54?

A. I do not have my sales figures with me. I hate to give you figures without the sales figures with me.

Q. I am asking for an estimate. Would you estimate

your total sales since 1954 have increased annually approximately a million dollars?

A. Yes, sir.

Q. That is ratio that I am talking about. Have these sales by Gerber Baby Foods to Monarch Division at Columbus increased over this same period at approximately the same ratio?

A. I do not have the detailed figures but in going over with my buyers I would say they would have increased.

Q. You understand I am going to ask you a lot of questions about a lot of companies?

A. Yes, sir.

Q. As I understand it, you do not have—you only have the 1958 figures. Is that right?

A. Yes, sir, that is true. But I do have the sales trend for them and whether we bought more or whether we bought less.

* * *

691 By Mr. Hays:

Q. May we get back to the Gerber Baby Foods
692 Company and your estimate as to the amount of annual sales to Monarch Division at Columbus by this company to Monarch. Will you tell me, if you have an estimate what that estimate is?

A. In what year, sir.

Q. From 1951 annually to the present.

A. I do not have anything further back than 1954.

Q. What do you have from 1954 on?

A. In 1954 the sales were approximately $20,000. In 1955 the sales were approximately $40,000. In 1956, the sales were approximately $40,000. In 1957, the sales were approximately $80,000; and in 1958, the sales were approximately $60,000.

Mr. Walker: Excuse me, Mr. Hays. Mr. Heitger, if you can based on your knowledge of the business now give

any estimates for these years prior to 1954, why I want you to know you are perfectly free to go ahead and do so. You can give an estimate. If you can not, say so. But if you can, do it.

The Witness: I have no further estimate on that with the exception that in 1953, I would estimate that our sales would be in the nighborhood, or our purchases would be in the neighborhood of $17,000. I would now hesitate to go any further back then that.

By Mr. Hays:

693 Q. As I understand you were then Assistant Manager?

A. Yes.

Q. Who was the Manager?

A. Mr. R. W. Keffer.

Q. Where is he now, is he dead?

A. No, sir, he is not dead.

Q. Is he still with the company?

A. No, sir.

Q. Did Monarch Division at Columbus purchase anything from Lake Odessa Canning Company?

A. No, sir, to my knowledge there is no purchases from Lake Odessa.

Q. Did the Monarch Division at Columbus purchase anything from Oscar Mayer and Company?

A. Yes, sir.

Q. Was that a private label or advertised label merchandise?

A. Oscar Mayer was their own label.

Q. Do you have any figures as to the amount of purchases by Monarch Division at Columbus from Oscar Mayer during the period 1951 to present?

A. Based on the best estimates I have, 1954 through 1958, our purchases remained steady at between two to

three thousand dollars per year. There was no variance.

Q. Did the Monarch Division at Columbus purchase
694 anything from Milwaukee Spice Mills?

A. To the best of my knowledge, Columbus did not purchase anything from Milwaukee Spice Mills.

Q. Did Monarch Division of Columbus purchase anything from Jewett and Sherman?

A. To the best of my knowledge we did not purchase anything from Jewett and Sherman, also I believe none as Holsom Foods.

Q. Known as what?

A. Holsom Foods, I believe they are known too are they not? We did not purchase from Jewett and Sherman.

Q. Did the Monarch Division at Columbus purchase anything from Lipton Tea Company?

A. Yes, sir.

Q. Did it purchase private label products or advertised products?

A. They were all advertised products.

Q. Do you have any information as to the dollar amount of purchases made from the Lipton Tea Company during the period 1951 to the present?

A. I have some estimation in '54 through '58.

Q. What are those estimates?

A. I would estimate in 1954 that we purchased $3,000. I would estimate in 1955 that we purchased, in '56 and
'57, they remained fairly constant between thirty and
695 forty thousand dollars worth, and in 1958 we purchased $58,000 worth. We purchased that from a local representative and there has been quite an increase in their business due to some new products which we took on, I believe.

Q. Did the Monarch Division at Columbus purchase anything from George A. Hormel and Company?

A. Yes, sir.

Q. Did they purchase private label or advertised products?

A. Purchased advertised products.

Q. Do you have any information as to the annual amounts of these purchases?

A. I have for, I would guess, between 1954, '55, and '56 that we purchased in the neighborhood of forth [sic] to forty-five thousand during those years. In 1957 we purchased approximately 30,000, and then in 1958 we purchased fifty-five thousand. We also buy that locally and do handle quite a few of their products.

Q. When you say you buy it locally, what do you mean?

A. I mean they have a local representative. I am giving you how we buy it, in other words.

Q. Did the Monarch Division at Columbus purchase anything from Bedford Products?

A. Yes, we, as far as I can find, did not purchase anything prior to 1956. In 1956 my approximate guess would be $4,000. In 1957, my approximate guess would be
696 $5,000, and in 1958, I would estimate we purchased $30,000. This increase I feel is due to the fact that we had a local broker who has done a lot of work with us and we have increased our business considerably with him.

Q. What do you mean by reference to a local broker? Is that your broker or his broker?

A. No, sir, that is a broker which represents Bedford Food Products. He has men in the field who have done promotion work. They will go out and promote store sales and it does lead to an increase in volume in many instances.

Q. Did the Monarch Division at Columbus purchase anything from Les Pommiers Cannery?

A. Yes, sir.

Q. Was it private label or advertised products?

A. That was private label.

Q. Insofar as the Bedford Products is concerned, was that private label or advertised products?

A. That was private label.

Q. That was your label?

A. Yes, sir.

Q. Do you have any information as to the amount of purchases from Les Pommiers Cannery?

A. Yes, sir.

Q. What is it?

A. Estimate in 1957, an order of approximately $200.

697 Q. Is that all?

A. There are no other purchases as far as I can determine.

Q. Did the Monarch Division at Columbus purchase anything from the Bluepoint Company?

A. Yes, sir.

Q. Was it private label or advertised goods?

A. Private label.

Q. Do you have any information as to the amount of such sales?

A. I would guess that approximately in 1955 we purchased $100 worth and in 1957 we purchased approximately $100 worth.

Q. Did the Monarch Division at Columbus purchase anything from Bluepoint Company?

A. That is the one you just asked.

Q. J. J. Gielow?

A. Yes, sir.

Q. Was it private label or advertised goods?

A. It was advertised. Their label; their own label.

Q. Do you have any information as to the amount of these purchases?

A. Yes.

Q. What is that information and what are they?

A. I would estimate that in 1955 we purchased ap-
698 proximately $2,000 worth, that in 1956 we purchased $7,000 worth, that in 1957 we purchased $7,000 worth. These are all approximate figures. And in 1958 we purchased approximately $20,000 worth. This is purchased also from a local broker and the Aunt Jane Pickle line as it is known from the Gielow people, has received quite a bit of advertising in our area and have done a big promotion job; therefore, a big jump in purchases.

Q. That is Monarch—has the Monarch Division at Columbus purchased anything from Receipe Foods?

A. Yes, sir.

Q. Private label or advertised goods?

A. Both. We purchase both.

Q. Do you have any information as to the dollar amount of these purchases?

A. Yes, sir.

Q. What is that?

A. My estimate, what year, sir?

Q. Whatever years you have during 1951 to the present.

A. My estimate for 1954 would be approximately $30,000. My estimate for 1955 would be approximately $30,000. My estimate for 1956 would be approximately $50,000. My estimate for 1957 would be approximately $30,000. And my estimate for 1958 would be approximately $32,000. It hasn't been too much change in that.

699 Q. Did the Monarch Division at Columbus purchase anything from J. L. Read Foods, Inc.?

A. Yes, sir.

Q. Was it private label or advertised goods?

A. That was private label, sir.

Q. Consolidated private label?

A. Yes, Consolidated private label.

Q. Do you have any information as to the amount of such purchases?

A. Yes, sir..

Q. What is that information?

A. I would guess approximately in 1954 and '55, '56, that our purchases were approximately $10,000 each year. In 1957 and '58, our purchases were approximately $1,000. This was done quite a bit and due, I think, primarily directly to the fact that we started buying from Grundy Center, which is one of our plants.

Q. Did the Monarch Division at Columbus purchase anything from Grocery Store Products?

A. Yes, sir.

Q. Was that advertised products or private label products?

A. That was advertised products, sir.

Q. Do you have any information as to the amount of such purchases during 1951 to the present?

A. I have approximate figures from 1954 through 1958.

700 Q. What are those figures?

A. I would guess that in 1954 we purchased approximately $10,000. I would guess in 1955 we purchased approximately $25,000. I would guess in 1956 we purchased approximately $25,000. I would guess in 1957 that we purchased approximately $25,000, and in 1958 approximately $25,000. This slight increase it looked like, slight increase in the figures due to the increased demand.

Q. Did the Monarch Division of Columbus purchase anything from P. J. Ritter Company during this period?

A. To the best of my knowledge we did not purchase anything from P. J. Ritter.

Q. Did the Monarch Division at Columbus purchase anything from Woolson Spice Company?

A. Yes, sir.

Q. Was it private label or advertised goods?

A. I believe that it was mostly private label.

Q. Do you have any information as to the amounts of such purchases?

A. Yes. sir, I have an approximate guess from 1956 through 1958. I have no knowledge of any purchases prior to that. In 1956 my guess would be that we purchased $5,000. In 1957, my guess would be that we purchased approximately $6,000. And in 1958 my guess would be that we purchased approximately $5,000.

701 Q. These companies, you have given estimates, most of them begin with the year 1954, is that correct?

A. Yes, sir.

Q. Do you have any information as to whether or not purchases were made of these companies prior to 1954?

A. I do not have any information as far as records are concerned or specific amounts, and the fact I was not in the buying at that time I would not want to make an estimate.

Q. Do you have knowledge as to whether or not products were bought with or without regard as to the dollar amount?

A. I have, yes, sir. The estimate would be based merely upon the fact that I had knowledge whether that product was handled by Monarch at that time in our sales book.

Q. Will you tell us which of these companies you did make some purchases from between the period 1951 to 1954.

A. To the best of my knowledge I will, sir.

Q. Wyler and Company?

A. No, sir.

Q. Custom Foods?

A. No, sir

Q. Wass Food Products?

A. Yes, sir.

Q. Armour and Company?

A. Yes, sir.
Q. Michigan Mushroom Company?
A. No, sir.
Q. Indiana Mushroom Corporation?
A. No, sir.
Q. Gerber Baby Foods?
A. Yes, sir.
Q. Lake Odessa Canning Company?
A. No, sir.
Q. Oscar Mayer and Company?
A. Yes, sir.
Q. Jewett and Sherman?
A. No, sir.
Q. Lipton Tea Company?
A. Yes, sir.
Q. George A. Hormel and Company?
A. Yes, sir.
Q. Bedford Products?
A. No, sir.
Q. Les Pommiers Cannery?
A. No, sir.
Q. Bluepoint Company?
A. No, sir
Q. J. J. Gielow?
A. No, sir. This is prior to '54, sir?
Q. Between 1951 and 1954.
A. No, sir.
Q. Receipe Foods?
A. Yes, sir.
Q. J. L. Read Foods?
A. Yes, sir.
Q. Grocery Store Products?
A. Yes, sir.
Q. P. J. Ritter Company?
A. No, sir.

Q. Woolson Spice Company?

A. No, sir.

Q. During the period 1951 through the present, did the Monarch Division of Columbus purchase anything from Joseph De Frates Company?

A. Not to my knowledge, sir.

Q. During that same period did it purchase anything from Moore and Company?

A. Not to my knowledge, sir.

Q. During that same period did it purchase anything from Rival Packing Company?

A. Yes, sir.

Q. Did it purchase private label products or advertised brands?

A. Advertised brands.

704 Q. Do you have any information as to the amount of these purchases?

A. Yes, sir.

Q. For what period?

A. I have information that I could give approximate figures on from 1954 through 1958.

Q. What are those estimates?

A. I would estimate in 1954 that we purchased $10,000. I would estimate in 1955 we purchased $25,000. I would estimate in 1956 that we purchased $25,000. I would estimate in 1957 that we purchased $30,000. I would estimate in 1958 that we purchased $40,000. I would also like to say in that respect we did not purchase before that due to the fact we had a franchise deal in our area and could not buy from these people, and when it was open we were able to purchase from them and our sales have increased. There is quite a bit of consumer demand in the area for Rival Dog Food.

Q. Can you tell me whether you mean to state you did

not purchase anything from Rival Packing Company during the period 1951 through 1954?

A. To 1954. To first purchases, the first purchase we have any knowledge of or I have any knowledge of, is in 1954.

Q. Did the Monarch Division at Columbus purchase
705 anything from Blue Seal Foods?

A. To the best of my knowledge, no, sir.

Q. Did it purchase anything from F. M. Wilson Canning Company?

A. Yes, sir.

Q. Were those purchases private label or advertised goods?

A. They were private label, sir.

Q. Do you have any information as to the amount of those purchases?

A. Yes, sir.

Q. For what years?

A. 1954 through 1958.

Q. Can you give me those estimates?

A. Yes, sir. I would estimate that in 1954 we purchased approximately $40,000 worth. I would estimate in 1955 that we purchased $25,000 worth. I would estimate in 1956 that we purchased $15,000 worth. I would estimate in 1957 we purchased $25,000 worth. I would estimate in 1958 we purchased $20,000 worth. As you can see during these years we fluctuated all over the lot.

Q. Did you say those purchases were private label?

A. Yes, sir, they were private label.

Q. That was Consolidated Foods label?

A. Yes, sir.

706 Q. Were any sales made by this company to Monarch Division at Columbus during the period 1951 to 1954?

A. Which company is that, sir.

Q. F. M. Wilson Canning Company?

A. To the best of my knowledge they did—we did purchase from them prior to 1954, yes, sir. I would like to qualify one other statement myself. There may have been an item that slipped in that wasn't private label. I would not want to go on record as saying a hundred per cent of our purchases from them were 100 per cent private label. Maybe one item or two might have slipped in under their label.

Q. Did the Monarch Division at Columbus purchase any products during the period 1951 to the present from Alma Canning Company?

A. Yes, sir.

Q. Were those purchases private label or advertised products?

A. Both.

Q. Do you have any information as to the amount of those purchases?

A. No, I do not have any specific amount at all.

Q. You just know something was bought?

A. Yes, sir.

Q. During what period?

707 A. I can not give the specific dates. To the best of my knowledge we have been purchasing from Alma back as far as 1951.

Q. During the period 1951 to the present, did the Monarch Division at Columbus purchase anything from Jay Freeman and Company?

A. To the best of my knowledge, no, sir.

Q. My same question with reference to Omega Food Products?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Mayclin Sales?

A. Best of my knowledge, no, sir.

Q. Same question with reference to McLean Frozen pies?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Gino Corporation?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Henderson's Portion Pack?

A. Best of my knowledge.

Q. Same question with reference to National Brands?

A. Which National Brands, sir?

Q. National Brands, Inc.

A. The address?

Q. I have an address here as Miami, Florida.

A. Best of my knowledge, no, sir.

708 Q. Is there another National Brands?

A. No, I was thinking of Standard Brands, sir.

Q. Did the Monarch Division at Columbus purchase anything from the Dixie Lily Milling Company during the period 1951 to the present?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Nelson Brokerage Company?

A. Best of my knowledge, no, sir.

Q. Same question with reference to the Elbeck Milling Company?

A. Best of my knowledge, no, sir.

Q. Same question with reference to American Frigid Dough?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Capitol Food Company?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Great China Foods Products?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Aurora Frozen Foods?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Vevco Foods?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Terry Foods?

709 A. Best of my knowledge, no, sir.

Q. Same question with reference to Morgan Packing Company?

A. Yes, sir. We did purchase from them.

Q. Were those purchases private label or advertised goods?

A. Both.

Q. Do you have any information as to the amount of those purchases?

A. No, sir, I do not.

Q. Do you have any information as to when these purchases were made?

A. These purchases were made — what years are you inquiring about?

Q. From 1951 to the present.

A. Best of my knowledge, we purchased all the years.

Q. Did the Monarch Division of Columbus purchase anything from Midwest Food Packers?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Gibbs and Company?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Manischewitz Food Products?

A. Best of my knowledge, no, sir.

Q. Same question with reference to American Home Foods?

710 A. Yes, sir, we have purchased from them.

Q. Did you purchase private label or advertised label?

A. Advertised goods.

Q. Do you have any information as to the amount of such purchases?

A. No, sir, I do not.

Q. Do you know when the purchases were made?

A. We have purchased all the time from them, 1951 through '58.

Q. Each year?

A. Each year.

Q. Did the Monarch Division at Columbus purchase anything from Moore and Company during the period 1951 to the present?

A. I believe you already asked about Moore. No, sir.

Q. The Moore and Company I am referring to now is Newark, New Jersey.

A. Best of my knowledge, no, sir.

Q. During the period of 1951 to the present, did the Monarch Division of Columbus purchase anything from Beechnut Packing Company?

A. Yes, sir.

Q. Private label or advertised products?

A. Advertised label.

Q. Do you have any information as to the amount of 711 these purchases?

A. No, sir, I do not.

Q. Do you have any information as to when these purchases were made?

A. These purchases were made to the best of my knowledge, all through the years.

Q. Each of those years?

A. In each of those years.

Q. During the period 1951 to the present, did Monarch Division of Columbus purchase anything from Croyden House Foods?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Bluepoint Division of General Foods Corporation?

A. Best of my knowledge, no, sir.

Q. Same question with reference to La Fayette Packing Company?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Leigh Food Products?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Fred Mushroom Products Company?

A. Yes, sir.

Q. Was that private label or advertised products?

A. That was their own advertised label.

712 Q. Do you have any information as to the amount of these purchases?

A. No, sir but they were insignificant.

Q. Well, you have some information in order to determine that they were insignificant. Is that correct?

A. Approximately $200 per year.

Q. Each year?

A. No, just during the last four years. That is the only time I have any knowledge of them.

Q. Do you have any information as to whether or not other sales were made during this period?

A. No, sir, I do not.

Q. During the period 1951 to the present, did the Monarch Division at Columbus purchase anything from Manning, Inc?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Jacksonville Milling Company?

A. Best of my knowledge, no, sir.

Q. Same question with reference to Barra Frozen Foods?

A. Best of my knowledge, no, sir.

Q. Same questi n with reference to Tone Bros?
A. Best of my knowledge, no, sir.
Q. Same question with reference to Mother's Foods?
A. Best of my knowledge, no, sir.
713 Q. Same question with reference to Boullo Food Products?
A. Best of my knowledge, no, sir.
Q. Same question with reference to Hoger Corporation?
A. Best of my knowledge, no, sir.
Q. Same question with reference to Wagner Bros.?
A. Best of my knowledge, no, sir.
Q. Does the Monarch Division of Columbus have any other purchasing offices other than Columbus?
A. Any other offices in Columbus?
Q. Any other purchasing offices other than Columbus at other cities?
A. Yes, sir, I presume so.
Q. Do you know where they are?
A. Not all of them, sir, no, sir.
Mr. Walker: May I have the last several questions read?
(Questions read.)
Mr. Walker: I am afraid there is confusion there. I don't think the witness knows what you mean by Monarch Division. You mean Monarch Division other than he is a part of?
Mr. Hays: As I understand, there is a Monarch Division at Columbus.
Mr. Walker: There is a Monarch Division at Columbus. I do not think he understood that you meant that.
714 Because he knows where the buying offices are for the Monarch Division in Columbus. There is only one.
The Witness: That is right. But he is asking if there is any other purchasing offices in the Monarch Division, or just every Monarch Columbus. Is there any other purchas-

ing offices of Monarch Columbus? Is that your question? By Mr. Hays:

Q. Yes.

A. No, sir, the Columbus purchasing office is the only one for Monarch of Columbus.

Mr. Hays: May I have that read back.

(The reporter read the answer as follows:

"Answer: No, sir, the Columbus purchasing office is the only one for Monarch of Columbus.")

Mr. Walker: There is no such thing as the Monarch Division.

Hearing Examiner Kolb: Where did you get that Monarch Finer Foods?

Mr. Walker: There is a number of Monarch Divisions, Your Honor. There is a Monarch Division Cumberland; there is a Monarch Division Roanoke; and there is Monarch Division elsewhere. They are all entirely separate. The one he knows about and works in is the Monarch Division Columbus.

715 Hearing Examiner Kolb: He asked him if any of these other divisions has purchasing offices.

Mr. Walker: That is what I was not sure whether that was the question and answered. That has not been answered, yet, as far as I can figure out.

Mr. Hays: Very well, I will ask that question.

By Mr. Hays:

Q. Do Monarch Divisions at the other cities have other purchasing offices?

A. Yes, sir.

Q. Does your testimony relate only to the Columbus purchases?

A. Yes, sir, my testimony is for the Columbus purchases only.

Q. What is the relationship of your Monarch at Columbus and Monarch at Cumberland?

A. We are merely sister divisions.

Mr. Hays: That is all I have on direct, Your Honor.

Cross Examination

By Mr. Walker:

Q. When did you—by you, I mean Monarch Division at Columbus, Mr. Heitger—when did you first start servicing the Royal Blue Stores?

A. Approximately four years ago, sir. Come in 716 December.

Q. You testified, I believe, that you had some knowledge about sales going back before the time that you became a manager of the Division. Is that right?

A. Yes, sir.

Q. And this is what enabled you to give an opinion that your Division did purchase from some of these companies going as far back as 1951?

A. Yes, sir.

Q. As to each one of those companies where you testified that you purchased from them in your opinion back to 1951, would it also be your opinion that you purchased from them prior to 1951?

A. Yes, sir in most instances it would be.

Q. Mr. Heitger, have you ever stated or suggested to any of your suppliers that they should buy Gentry's products?

A. No, sir.

Mr. Hays: I will object to that as being beyond the scope of the direct.

Hearing Examiner Kolb: That is beyond the scope of the direct examination. Properly on defense.

* * *

719 By Mr. Walker:

Q. Mr. Heitger, what would you estimate is the percentage of your purchases that go through the Chicago

Central buying office of Consolidated or the West Coast buying office?

A. I would approximate 15 per cent.

Q. Has any Consolidated personnel ever asked or directed you to buy or not buy from any company for reasons other than quality, price, and service?

Mr. Hays: I object to that as being beyond the scope of the direct.

Hearing Examiner Kolb: Objection sustained.

By Mr. Walker:

Q. What was the approximate total dollar volume of your purchases in 1958 Mr. Heitger?

A. A little better than fifteen million.

Q. What would be your estimate as to what the over all trend of your purchases has been since, say, 1950?

A. There has been a definite marked increase, substantially so.

Q. What has been the trend of purchases from most of your suppliers, individually since about 1950?

A. Individually most of them naturally have followed the trend of business and have increased.

720 Q. Do you know which ones of your suppliers use onion or garlic in their products, Mr. Heitger?

A. No specific ones. I presume Lipton in their onion soup would be using onion mix or onions in their onion soup I presume.

Q. As to those products with onion or garlic is identifiable from the appearance you know they use garlic or onion?

A. Yes, if he read the label.

Q. Do you know which of these uses dehydrated onion or garlic?

A. No, sir I would not know. I just presume they use either one.

Q. As a practical matter, as to most of your units sup-

pliers, Mr. Heitger, could you cease purchasing from them?

A. No, sir, I don't believe so, because the people ask for that particular item we have to have it.

Q. That is true of the advertised brands?

A. Advertised brands, yes, sir.

Q. I believe you said that as to a number of these companies that you have testified about on direct examination, without my asking you specifically, as to a number of them, you purchase from a local broker, is that right?

721 A. Yes, sir.

Q. So that in those instances you do not have contact with the company itself. Is that right?

A. We do not contact them directly, no, sir.

Q. Only through the broker?

A. Yes.

Q. Is that true of a large number of your suppliers?

A. Quite a few of them.

* * *

722 *Redirect Examination*

By Mr. Hays:

Q. Mr. Heitger, insofar as the private label products are concerned, you could as a matter of fact stop buying those from any one supplier, could you not?

A. If we had price, quality, we are allowed to buy where we want to; however, it must be approved qualitywise by our Chicago office under our own Monarch label.

Q. You have a list of approved sources for private 723 label goods. Is that right?

A. Yes, sir, we do have.

Q. Is there more than one source for one product?

A. Yes, sir, there are more than one source in many instances and in many instances we can get a special approval.

Q. With reference to the sale of advertised goods, you could stop buying some advertised goods, could you not?

A. Not as long as the consumer demand was there.

Q. If the consumer demand diminishes you could diminish your purchases, could you not?

A. The purchases themselves would diminish by themselves without us doing anything to make them diminish.

Q. In your experience as a salesman, have you had calls for products that you have not carried?

A. Yes, sir.

Q. Did you always obtain those products?

A. No, sir.

Q. Later on?

A. No, because if you did your warehouse would contain somewhere in the neighborhood, a wild guess, 35 to 40,000 items and no warehouse could have that many.

Q. So with reference to advertised goods, you are limited in the number that you carry, are you not, by the 724 practicality of the situation?

A. Only by the size of warehouse.

Q. And it is not practical to carry a large number of items as you have already indicated, is it?

A. It is practical to carry what the stores ask you to buy, as much as you can.

Q. In some instances you did not obtain goods that were called for, did you?

A. If it were an item that was very popular and we got a lot of calls for it, we normally put it in.

Q. If you did not get a lot of calls for it, you did not put it in?

A. No, sir, that is right.

Q. We have referred here to two categories of products, private label and the advertised products. By advertised products, you meant anything that was not private label, did you not?

A. Yes, sir, that is true.

Q. So as a matter of fact there are a number of adver-

tised products which are not advertised. Is that not correct?

A. There are a number of items that would not be private label that would normally carry some advertising though.

Q. Some would carry some advertising and others
725 would not. Is that correct?

A. Yes, sir.

Q. Do you sell any of these products to retail outlets that are part of Consolidated Foods?

A. No, sir.

Q. The Monarch Division at Columbus does not?

A. No, sir.

Q. What type of products does Monarch Division at Columbus sell? Are they all food products?

A. All food products?

Q. Yes.

A. No, sir.

Q. Do you sell any soap products?

A. Yes, sir.

Q. What soap products do you sell?

A. All the fatly advertised brands.

Q. Sell cigarettes?

A. Yes, sir.

Q. What brands?

A. All brands.

Q. As a matter of fact, are there some products that you carry that you do not make a profit on?

Mr. Walker: Excuse me, Your Honor, I fail to see now what the relevance of these questions are to the case at all and certainly not to the examination produced
726 thus far that I know of.

Hearing Examiner Kolb: You are getting way beyond the scope of the cross there.

• • •

Recross Examination

By Mr. Walker:

Q. Think back if you will, please, Mr. Heitger, to the various companies that you testified about on your direct examination and their products, particularly the companies you testified you purchased advertised products from. As to most of those companies and their products, would you say there is a consumer demand created by advertising in your area?

A. Yes, sir, I would definitely say there was.

Mr. Walker: That is all.

Further Redirect Examination

By Mr. Hays:

Q. His question was asked to most of them. Now, which of those products is there not advertising appeal created?

A. Do you mean in your question, sir, that they do not run even one ad per year?

Mr. Hays: Will you read Mr. Walker's question, 727 please.

(The reporter read the question as follows:

"Question: Think back if you will, please, Mr. Heitger, to the various companies that you testified about on your direct examination and their products, particularly the companies you testified you purchased advertised products from. As to most of those companies and their products, would you say there is a consumer demand created by advertising in your area?")

By Mr. Hays:

Q. You said there was what consumer demand created by advertising as to most of them?

Mr. Walker: Maybe there is for all, if you want to ask him that question.

By Mr. Hays:

Q. Now, as to which of these companies was there not a consumer demand created by advertising?

A. What is—I can not ask a question. What is consumer demand created by advertising? Is one ad creative of it?

Q. I do not know, sir. You answered the question and you understood it when Mr. Walker asked it. I assume you understand it when I ask it.

A. Yes, sir.

728 Mr. Hays: Now, will you read my question.

Mr. Walker: I am going to object, Your Honor, because the witness has not testified that not all this is true as to—all he said was yes.

* * *

730-A The Witness: May I have the question read again?

(The reporter read the question as follows:

"Question: Now, as to which of these companies was there not a consumer demand created by advertising?")

Mr. Owen: There is no such testimony in the record.

The Witness: As far as I know, sir, that would be practically an impossible question to answer and would only be an opinion, and if I were to pick out the companies that were to—that created a demand through advertising, it would only be a wild guess. However, if you would like my wild guess as to what company created the demand through advertising, I will go down through the list for you.

By Mr. Hays:

Q. As to what companies created a demand for advertising?

A. No, as to what companies do advertise and could possibly then have created a demand for their products through advertising, which is the question which you asked me.

Q. I am asking you which ones do not have a de-

731 mand arising out of advertising.

A. If there are any in here who do not advertise, then, I presume they would be the companies who do not create a demand through advertising and I am not qualified to say which one of them run ads.

* * *

W. J. MOORE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Please state your name and address.

A. W. J. Moore, 702 South Third Avenue, Marshalltown, Iowa.

Q. Where are you employed, sir?

732 A. Vice-President of Western Grocer Company.

Q. What is the Western Grocer Company?

A. It is a division of Consolidated Foods Corporation.

Q. What does it do?

A. Wholesale Grocers.

Q. Where does it operate?

A. They operate out of five branches with headquarters at Marshalltown.

Q. They cover the United States?

A. No, sir.

Q. What areas do they cover?

A. We operate Davenport, Des Moines, Albert Lea, Minnesota, Mason City, Iowa, and Manhattan, Kansas.

Q. To whom does it sell?

A. Sell retail grocers and institutions.

Q. Does it sell to other divisions of Consolidated Foods?

A. Not generally, no, s[illegible] There might be a pick up occasionally.

Q. How long have you been Vice-President in charge of Merchandising?

A. Since the 15th of January.

Q. What position did you hold prior to that?

A. I was President for eight years.

Q. That takes you back to 1951?

A. That is right, sir.

733 Q. Does the Western Grocer Division purchase food products for resale?

A. Yes, sir.

Q. Are you familiar with the companies that it purchases from?

A. Yes, sir.

Q. During the period January 1, 1951, to the present, did the Western Grocer Division purchase anything from Wyler and Company?

A. Yes, sir.

Q. What did it purchase?

A. Lemonade mix principally.

Q. Were those private label products?

A. No.

Q. Advertised products?

A. Yes, sir.

Q. Are you familiar with the extent of those purchases?

A. Yes, sir.

Q. What were those purchases during the period January 1, 1951 to the present?

A. All these figures I will give you—

Mr. Walker: Excuse me, may I interrupt for a moment? This witness can go back earlier than 1951. If you do not do it on direct, I will have to go through with each com-
734 pany on cross and ask him to go back before 1951 as to these companies. Would you want to cover it all at once or we will do it separately if you wish? I thought it would save time.

Mr. Hays: How far do you want to go back?

Mr. Walker: Go back to 1949.

Mr. Hays: As long as it is understood I am asking the question for you.

Mr. Walker: I will be happy to have that understanding.
By Mr. Hays:

Q. All right. Will you give us those figures from 1949 to the present?

A. Yes, sir. These figures I give you—all these figures are a reasonable estimate based on my long experience in the wholesale grocery business and knowing about what we purchase from these various companies. 1951, we bought about $200.

Q. '49.

A. Nothing in '49 or nothing in '50; '51, $200; '52, $40; '55, $180; '56, $1,000; '57, $1,100; '58, $900.

Q. Nothing in '57?

A. Yes, I said $1,100, sir.

Q. During the period 1949 to the present, did your Western Grocer Division purchase anything from Custom Foods, Inc.?

735 A. Yes, they did.

Q. Were those purchases private label or advertised products?

A. Those were advertised products. Their own products.

Q. In what amount were those purchases since 1949 for each year?

A. There was nothing in '49, '50, or '51. In '52 we bought $275, and '53 about $750. That is the last purchases we made.

Q. During the period 1949 to the present, did Western Grocer Division purchase anything from Wass Food Products?

A. Yes, sir.

Q. Were those purchases private label merchandise or advertised products?

A. Well, they have, they manufacture sauces and they came out with—developed what they call open pit barbecue

sauce as a result. Our sales increased as a result, our purchases increased as a result.

Q. Was that their label?

A. Yes, sir.

Q. What were the amounts of those purchases?

A. Nothing from 1949 to 1953, inclusive.

Q. What about 1954 on?

A. Hundred dollars.

Q. '55?

736 A. Five hundred dollars.

Q. '56?

A. Eight Hundred dollars.

Q. '57?

A. Nothing.

Q. '58?

A. Five hundred.

Q. During the period 1949 to the present, did the Western Grocer Division purchase anything from Armour and Company?

A. Yes, sir.

Q. Did it purchase private label goods or advertised goods?

A. All advertised, sir.

Q. What were the extent of those purchases?

A. 1949 we bought $4,000.

Mr. Walker: Excuse me, is it implicit in each one of these questions and answers these are estimates and not precise dollar amount?

The Witness: I prefaced my remarks by that. 1950, $11,000; '51, $1,700; '52, $22,000; '53, $18,000; '54, $82,000; and from 1955 to 1956, approximately $40,000. Also '57 about $40,000; and in '58, they ran between 45 and $50,000.

Q. From 1949 to the present, did the Western Grocer Division purchase anything from the Michigan Mush-

737 room Company?

A. Yes, sir.

Q. Were those purchases private label goods or advertised goods?

A. They were private label.

Q. What was the extent of those purchases?

A. In 1949 they were about $7,500. They ran about the same in 1950. In 1951 and '52 about $9,000; in 1953, $4,000; in 1954, $2,500; 1955, $10,000; '56, $14,000; in 1957, $7,300; in '58, nothing.

Q. During the period 1949 to the present, did the Western Grocer Division purchase any products from the Gerber Baby Foods?

A. Yes, sir.

Q. Were those advertised or private label?

A. All advertised.

Q. What was the extent of those purchases?

A. They remained fairly constant through the years, due to the fact we have closed some of our branches and their national increase in business has been offset by the fact that we have had fewer branches. Gerber in 1949, $135,000; $120,000 in 1950; $140,000 in '51; $149,000 in '52; about the same in '53. '54, $165,000; '55, $125,000; '56, $130,000 also the same for '57. In '58, $117,000.

Q. During the period 1949 to the present, did the 738 Western Grocer Division purchase anything from Lake Odessa Canning Company?

A. Yes, sir.

Q. Were those purchases private label or advertised goods?

A. They are advertised brands.

Q. What was the extent of those purchases?

A. We purchased nothing from this firm from 1949 to 1956 inclusive.

Q. What were the figures thereafter?

A. '57, due to the fact they brought out a very popular

pie mix which they are becoming more popular all the time, and in 1958 we bought $20,000, their own brand.

Q. During the period 1949 to the present, did the Western Grocer Division purchase anything from Oscar Mayer and Company?

A. Yes, sir. There were some purchases.

Q. Were those private label or brand products?

A. Their own label.

Q. What was the extent of those purchases?

A. 1949, $8,000. About the same in 1950. $3,000 in '51; $2,000 in '52; $500 in '53; $150 in '54; $50 in '55; $75 in '56; and $500 in '57, and about the same in '58.

Q. Those are pretty good estimates, are they not?

A. Very good estimates.

739 Mr. Owen: Some of them are almost exact.

By Mr. Hays:

Q. During the period 1949 to the present, did Western Grocer Division purchase anything from Milwaukee Spice Mills?

A. No, sir.

Q. Do you know anything about Milwaukee Spice Mills?

A. Not a thing, sir. Never heard of the firm.

Q. During the period 1949 to the present, did Western Grocer Division purchase anything from Jewett and Sherman?

A. Yes, sir.

Q. Were those private label or branded goods?

A. Part of each.

Q. What was the extent of those purchases?

A. That was the Holsom Products Company which is a division of Jewett and Sherman. They have various branches. In 1949, $19,000; 1950, $14,000; '51, $14,000; '52, $9,000; '53, $4,000; '54 about $8,500; '55, $9,000; '56, $2,000; '57, $5,000; '58, $5,000.

Q. During the period 1949 to the present, did Western Grocer Division purchase products from the Lipton Tea Company?

A. Yes, sir.

Q. Were those private label or branded goods?

A. All nationally advertised.

740 Q. What was the extent of those purchases?

A. '49, $33,000; '50, $35,000; '51, $50,000; '52, $58,000; '53, $70,000; '54, $60,000; '55, $70,000; '56, $75,000; '57, $70,000; '58, $68,000.

Q. During the period 1949 to the present, did Western Grocer Division purchase products from George A. Hormel and Company?

A. Yes, sir.

Q. Were those private label or branded products?

A. They were nationally advertised.

Q. What was the extent of those purchases?

A. 1949, $107,000; 1950, $125,000; 1951, $153,000; 1952, $158,000; 1953, $150,000; '54, $125,000; '55, $150,000; '56, $125,000; $118,000 in '57; '58, $133,000.

Q. During the period 1949 to the present, did the Western Grocer Division purchase products from Bedford Products, Inc.?

A. Very little. I think we bought one year. Nothing was purchased except in the year 1955 when we bought $900.

Q. During the period 1949 to the present, did Western Grocer Division purchase products from Les Pommiers Cannery?

A. No, sir.

Q. During the period 1949 to the present, did the Western Grocer Division purchase products from Bluepoint

741 Company?

A. I believe there was one small order in '51 during all that period of $51.

Q. During the period 1949 to the present, did Western

Grocer Division purchase products from J. J. Gielow and Sons?

A. Yes, they did.

Q. Were those purchases private label or branded products?

A. Those were mostly factory label.

Q. Is a factory label a private label?

A. Factory label is not a private label, sir.

Q. What were the extent of those purchases?

A. 1949, $2,500; 1955, $250. Those are the only two.

Q. No purchases in other years?

A. That is right.

Q. During the period 1949 to the present, did the Western Grocer Division purchase products from Receipe Foods?

A. Yes, sir.

Q. Were those purchases private label or branded products?

A. Private label.

Q. What was the extent of those purchases?

A. Nothing up to the year 1951. We bought 742 $150. 1954, we bought $2,500; 1955, $800, 1956, we bought $300 and nothing since.

Q. From 1949 to the present, did the Western Grocer Division make any purchases from J. L. Read Foods?

A. Yes, sir.

Q. Were those purchases private label or branded products?

A. They were private label.

Q. What was the extent of those purchases?

A. Nothing up to '52. In '52 we bought $350; '53 a thousand dollars; '54, $6,000; '55, $4,000; '56, $1,000; '57, $1,500; '58, $1,200.

Q. During the period 1949 to the present, did the West-

ern Grocer Division make any purchases from Grocery Store Products?

A. Yes, sir.

Q. Were those purchases private label or branded products?

A. Yes, sir.

Q. Which?

A. They were private label.

Q. What was the extent of those purchases?

A. These people packed our private label macaroni. In 1949 we bought $28,000; approximately the same in 1950; $13,000 in '51; $3,500 in '52; $3,500 in '53; $3,500 in 743 '54; and about the same in '55 and '56. '57, $3,700; and in '58, $3,600. They discontinued the packing of private label, so we couldn't buy from them any more.

Q. When did they do that?

A. They discontinued macaroni back in '52 and they did pack noodles, but we couldn't buy just noodles alone, so we discontinued it.

Q. What were those purchases for the year 1952?

A. Those were macaroni and noodles.

Q. Did you discontinue to purchase those?

A. The noodles for a time, yes, sir.

Q. Let me see if I understand you correctly in that. Before 1952 Grocery Store Products packed under your label, macaroni?

A. Yes. Can I explain. At that time we had the Jack Sprat brand as our own brand. That was a brand of the Western Grocer and they packed our Jack Sprat Macaroni which was our private brand.

Q. Before 1952?

A. Yes, sir. 1949.

Q. Now, 1952 they discontinued making macaroni?

A. No, they had their own national advertised brand, Foulds and they discontinued the packing of private label.

Q. And they continued to pack under private label noodles?

744 A. Yes, sir.

Q. For each year up until the present time. Is that correct?

A. Well, no not exactly. They discontinued that shortly. They have other products that we have been buying since that time.

Q. I see. In other words, there are other products which you purchase since 1952?

A. They have nationally advertised products, yes, sir.

Q. Are those private label or—

A. National advertised.

Q. Those purchases after 1952 were a combination of private label noodles and nationally advertised products?

A. Yes, sir.

Q. During the period 1949 to the present, did Western Grocer Division purchase products from P. J. Ritter Company?

A. No, sir.

Q. During the same period did Western Grocer Division purchase products from Woolson Spice Company?

A. Yes, sir.

Q. Were those private label or branded products?

A. Private label.

Q. What were the extent of those purchases?

A. We discontinued packing our own spices in 1955,

745 and our Chicago buying office secured a source of supply for us from the Woolson Spice Company. We started to buy in 1956.

Q. What was the extent?

A. $25,000 the first year, and about $35,000 in '57 and '58.

Q. During the period January, '49 to the present, did Western Grocer Division purchase products from Rival Packing Company?

A. Yes, sir.

Q. Was that private label or branded products?

A. Their own brand.

Q. What were the extent of those purchases?

A. Nothing up to 1957. $6,000 in '57 and $5,000 in '58.

Q. During the period 1949 to the present, did Western Grocer Division purchase products from Joseph De Frates Company?

A. No, sir.

Q. During that same period did they purchase from Moore and Company?

A. No, sir.

Q. During that same period, did they purchase from Blue Seal Foods?

A. Yes, sir.

746 Q. Were those purchases private label or branded?

A. Private label.

Q. What was the extent of those purchases?

A. In 1949 we bought $50,000; '50, $65,000; '51, $85,000; '52, $65,000; '53, $50,000; '54, $30,000; '55, nothing; '56, a thousand; '57, a thousand; and '58, nothing. This decline was due to the fact that we bought our own salad dressing plants.

• • •

By Mr. Hays:

Q. During the period 1949 to the present, did the Western Grocer Division make any purchases from the Alma Canning Company?

A. Yes.

Q. Was that private label or branded products?

A. Private label.

Q. What was the extent of those purchases?

A. I have no estimate other than just a guess, a good guess and that would be a matter of a thousand dollars. We did not buy anything in 1957, from '49 to '57. Probably a thousand dollars in '57 and maybe $1,500 in '58.

Q. During the period 1949 to the present did West-
747 ern Grocer Division make any purchases from Morgan Packing Company?

A. Yes, sir.

Q. Was that private label or branded products?

A. Private label.

Q. What was the extent of those purchases?

A. We only had—we bought very little, if any, from '49 to '56. We bought in '56, we bought $32,000.

Q. What about '57?

A. Well, our fiscal—well, I will say nothing in '57.

Q. What about '58?

A. About $9,500.

Q. During the period 1949 to the present, did the Western Grocer Division make purchases from Hunt Foods of Ohio, or Hunt Foods of California?

A. Well Hunt Foods of Ohio, on the Ohio Match Company, but you are talking about the food department, I presume?

Q. I am talking about anything, match purchases or anything.

Well, I don't have anything on matches, only on food. But our match purchases are—I think, are about the same as our food purchases. That is rather peculiar but that is true.

Q. In other words, you did make purchases from those two companies in that period?

748 A. Yes, sir.

Q. Were those branded or private label?

A. Nationally advertised brands.

Q. What were the extent of those purchases?

A. Around 35 to $40,000.

Q. In what years, sir?

A. Your advice came in so late I did not get a chance

to check on those, but we did have in—last year we bought about $40,000 from California, that is fruits, catsup, sauces.

Q. Do you have any information as to prior years other than last year?

A. No, only I would say that our business has been increasing.

Q. Do you know about what it was when you started?

A. Nothing.

Q. Nothing in 1949?

A. That is right.

Q. I will concede that is a trend, sir.

A. That is due to their terrific national advertising campaign. We are forced to use it.

Q. During the period 1949 to the present, did you make any purchases from Tone Bros?

A. They are spice manufacturers. Yes, sir.

Q. Was that branded or private label products?

749 A. That is their own brand.

Q. What were the extent of those purchases?

A. About $14,000 for '57 and '58. Nothing before that time.

Q. Did Western Grocer Division, during the period 1949 to the present, make purchases from any of the following concerns: Jay Freeman and Company, Omega Food Products, Mayclin Sales Company; McLean Frozen Pies, Gino Corporation, Henderson's Portion Pack, National Brands, Inc.; Dixie Lily Milling Company; Nelson Brokerage Company; Elbeck Milling Company; American Frigid Dough, Capitol Food; Great China Food Products?

A. Yes, sir.

Q. Except Great China, Aurora Frozen Foods, Vevco Foods, Terry Foods, Midwest Food Packers, Gibbs and Company, Manischewitz Foods Products, American Home Foods, Beechnut Packing Company, Croyden House Foods, Bluepoints Division of General Foods, La Fayette Packing.

Company, Leigh Food Products, Fred Mushroom Products, Manning, Inc.; Jacksonville Milling Company; Barra Frozen Products, Mother's Foods, Boullo Food Products; Hoger Corporation, Wagner Bros.

A. No, sir.

Mr. Walker: Excuse me just a moment, please? There is some companies you have put on this list, Mr. Hays,
750 that were not on the list when you gave it to me over the telephone. The witness, therefore, thinks that this is the same list but it is not that I gave him. Some of the companies you have got on that list are companies that are in the other group that there has been testimony about before. For example, American Home Foods; they were part of the original request. Aurora Frozen Foods, the same thing. So he will have, I believe, purchases from American Home Foods and Aurora. He does not connect these with this second list of yours because they were not given to him as a part of the second list, but rather long ago.

Mr. Hays: I see.

By Mr. Hays:

Q. Your answer is no except for American Home Foods and Aurora.

A. You did not list American Home Foods, did you?

Q. I will call them out to you.

A. American Home Foods?

Q. Yes.

A. We have bought from them, yes, sir.

Q. You have bought from Aurora Frozen Foods?

A. Yes, sir.

Q. Insofar as American Home Foods is concerned, did you purchase private label or branded products?

751 A. Their products, nationally advertised products.

Q. What was the extent of those sales?

A. In '49 about $8,000; 1950, $6,000; '51, $8,000; '52, $7,000; '53, about $10,000; and about $10,000 in '54; '55,

$15,000; '56, $30,000; '57, $40,000; and '58, $57,000.

Q. Did you give a figure for 1954?

A. Yes, sir. About the same as '53. That was $10,000.

Q. During the period 1949 to the present, did Western Grocer Division make any purchases from Aurora Frozen Foods?

A. Yes, sir.

Q. Private label or branded products?

A. Our brand.

Q. What was the extent of those purchases?

A. Nothing up to '53; $47 in 1953; $160 in '54; $130 in '55; $80 in '56; $250 in '57; $230 in '58.

Mr. Hays: That is all I have, Your Honor.

Cross Examination

By Mr. Walker:

Q. When did you first start carrying Hunt Foods Products?

A. We were almost strictly a private label house, that is prior to the time we started to handle Monarch. Then, in our voluntary group required that we buy these other brands because of the national advertising. I think we started to buy about 1954; small amounts.

752 Q. When did you pick up those voluntary groups you just mentioned?

A. We started a voluntary group business in 1928. That was a different type.

Q. You mentioned you have added one. Did you add any in the period between 1951 and the present?

A. Any what?

Q. Any voluntary groups?

A. I believe it was around 1950 we started the Royal Blue Stores.

Q. Was that not about 1953 you started the Royal Blue Stores?

A. A little prior to that time, yes.

Q. You testified to fluctuations in your purchases from American Home Foods. What is the explanation in your opinion for those fluctuations, sir?

A. Their terrific national advertising campaign on Italian foods, Chef Boy-Ar-Dee products.

Q. How do you buy those products, sir?

A. Those are usually bought through a broker.

Q. You testified the fluctuations in your purchases from Armour. What is your opinion of the reason for those fluctuations?

A. There again, Armour decided to emulate Hormel and go into the canned meat business in a big way. They
753 did a lot of national advertising and in some cases developed such a demand we had to put in a national brand of canned meat, so we picked on Armours. It was the most popular, one of the most.

Q. You testified to purchases from Bedford Products in about 1955, I believe.

A. That is right.

Q. What is the reason you purchased from Bedford in 1955?

A. Due to a freight situation. It was impossible for us to buy out of New York and ship clear to Iowa. We had to buy out of Chicago supplier.

Q. You testified, I believe, to fluctuations in your purchases from the Blue Seal Company?

A. Yes, sir.

Q. What are the reasons for those fluctuations?

A. They were packers of our own Jack Sprat label for many years, and Consolidated Foods Corporation purchased the Leigh Food Division which had a salad dressing manufacturing company. Naturally we bought from them.

Q. How do you buy Blue Seal Products, sir?

A. Now?

Q. Yes, do you buy them from a broker?

A. At that time, we did, sir, yes, sir.

Q. What are the products of Custom Foods, Mr. Moore?

754 A. I believe they were soup mixes, soup bases, concentrated soup base. You add water to it, mostly for institutions.

Q. Do you sell to institutions also?

A. Yes, sir.

Q. Your purchases from Gerber Foods, Mr. Moore, you testified to fluctuations. What is your opinion of the explanation for those fluctuations?

A. Well, Gerbers Foods, baby foods are by far the most popular brand of food products in our territory. Due to the increased number of babies, and the greater variety of baby foods under the Gerber brand, created a situation where they just naturally grew, and their terrific advertising campaign.

Q. You testified to purchases from Grocery Store Products. What are some of the products they supply you, Mr. Moore?

A. They were the ones that packed our Jack Sprat macaroni in '49.

Q. There are some advertised products you purchased from them?

A. Yes.

Q. What are those?

A. I am trying to remember the name. There is a sauce they manufacture.

755 Q. Kitchen Bouquet, sir?

A. Kitchen Bouquet, that is right.

Q. Am I correct you testified on direct examination for the reasons for your fluctuations in purchases. Is that right?

A. Yes, sir.

Q. Do you buy Grocery Store products through a broker?

A. We did at that time, sir. We do now, yes, on this sauce.

Q. You testified to purchases from the Hormel Company?

A. Yes, sir.

Q. What is your explanation if any for the variation in purchases there?

A. Their very, very aggressive advertising program. They almost forced us to buy.

Q. What are the names of some of their products, sir?

A. Spam, Hormel Chili con carne, those are the two most popular, and Dinty Moore Beef Stew.

Q. How have you bought products from Jewett and Sherman, sir?

A. They were usually bought through a broker, and at first, I believe, they have their own representatives now.

Q. What is the explanation, in your opinion, for the fluctuation in purchases from this company?

756 A. Well, as far as Western Grocer, it is because we are confining most of our pickle business to our own plant.

Q. Do you buy Lake Odessa products from a broker?

A. Yes, sir.

Q. What are the products you have purchased from Lipton Tea?

A. The big volume item, of course, is Lipton Tea, that is the most popular tea in our territory and I think most all over the United States; soup mixes and they do pack a dessert.

Q. Dried soups, sir?

A. Yes, sir.

Q. Are these nationally advertised products?

A. Very aggressively.

Q. What is your explanation for your fluctuations of purchases from Lipton Tea?

A. Well, I would just say increased consumer demand is all. We do nothing to increase the sale of it.

Q. What are the products you purchase from Oscar Mayer?

A. Their own line of canned meats. There was a time when we bought a few of their canned hams.

Q. Those are advertised products?

A. I think fairly well advertised. At least locally.

Q. You purchase those through a broker?

757 A. No, sir, we bought those direct.

Q. Direct from the Oscar Mayer local representative?

A. That is right.

Q. Have you purchased the Michigan Mushroom products from a broker?

A. Yes, sir.

Q. What are the advertised products, if any, you purchase from J. L. Read?

A. I don't know of any.

Q. What products are those?

A. Possibly salad dressings.

Q. Are there any sauces?

A. Not that I know of. No. There are various types of dressings, French dressing, Russian dressing.

Q. Have your purchases there been affected by your business with the Grundy Center plants?

A. Yes, sir.

Q. Rival Packing Company, you have testified to purchases there, Mr. Moore. Those are nationally advertised products, are they?

A. Yes, sir. Dog food, Rival dog food.

Q. How do you purchase those?

A. Those are purchased through a broker.

Q. Why did you first start purchasing Rival dog food?

A. Because the aggressive work on the part of the
758 broker with his own crew of men call on the retailers and took orders and brought some orders in, we had to buy the products.

Q. The broker brought the orders to you?

A. That is right, sir.

Q. Are your purchases from Wyler and Company—have they been from a broker?

A. I believe they are, yes, sir.

Q. Just for the record, Your Honor. Have you ever stated to your suppliers or potential suppliers that they should buy Gentry's products?

Mr. Hays: Objection, beyond the scope of the direct and in the same category as the question asked of a previous witness to which the Examiner sustained the objection.

Hearing Examiner Kolb: Objection sustained.

By Mr. Walker:

Q. Have any Consolidated or Gentry personnel asked you to do so?

Mr. Hays: Objection.

Hearing Examiner Kolb: Objection sustained.

Mr. Walker: May we have a stipulation, Your Honor, for the record, if these two questions were asked of all of the witnesses that will be on the stand today and tomor-
759 row there would be an objection and it would be sustained—

Hearing Examiner Kolb: Insofar as—

Mr. Walker:—unless the question is opened up?

Hearing Examiner Kolb:—the same as has been asked the last two witnesses, it would be sustained.

Mr. Walker: Thank you, sir.

By Mr. Walker:

Q. Approximately what percentage of your buying is

done through the Chicago or the West Coast buying offices of Consolidated, Mr. Moore?

A. Oh, it ranges between 15 and 18 per cent.

Q. What was the approximate total dollar volume of your purchases in 1958?

A. About $18,000,000. Little over $18,000,000.

Q. What has been the over all trend of Western Grocer purchases since about 1950?

A. They have been going down.

Q. What, in your opinion, are the reasons for this trend?

A. The discontinuance of many small accounts and concentrating on large accounts and we cut the number of branches from ten to five.

Q. As a practical matter in your opinion, Mr. Moore, as to most of your suppliers, could Western Grocer 760 cease purchasing from them?

Mr. Hays: Objection, Your Honor.

Hearing Examiner Kolb: Read that question.

(The reporter read the question as follows:

"Question: As a practical matter in your opinion, Mr. Moore, as to most of your suppliers, could Western Grocer cease purchasing from them?")

Hearing Examiner Kolb: Objection overruled.

The Witness: Not if we are going to stay in the wholesale grocery business. We would have to continue to buy from them.

Mr. Walker: No further questions, sir.

Redirect Examination

By Mr. Hays:

Q. In order to stay in the wholesale grocery business you would have to continue to buy from some of them, but it would not be necessary to buy from all of them, would it, to stay in the wholesale grocery business?

A. You are asking about the national advertised products?

Q. Yes.

A. There might be some that we could discontinue, but not the major ones, no, sir.

Q. Do you carry all the national advertised brands of all products?

761 A. No, sir, because lots of them are locally advertised in New York or Chicago, but the national advertised, through television, periodicals, we carry a pretty good share of them.

Q. You have referred to making a number of purchases through brokers?

A. Yes, sir.

Q. Were those brokers representatives of the seller?

A. Yes, sir.

Q. In all instances?

A. Yes, sir.

Mr. Walker: Representatives of what?

The Witness: The seller.

Mr. Walker: Thank you.

By Mr. Hays:

Q. In what area did you say Western Grocer Division conducted its business and sales?

A. In Iowa, in most of Eastern and central Iowa, not so much in the western part, and southern Minnesota, and a small area around Manhattan, Kansas; and also in Illinois, a part of Illinois and Wisconsin.

* * *

762 J. W. DAWKINS was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Will you state your name, address, and place of business.

A. J. W. Dawkins, 2011 North Snelling, St. Paul, Minnesota.

Q. Where are you employed, sir?

A. Klein Super Market. I am secretary-treasurer and comptroller.

Q. Are they connected with Consolidated Foods?

A. They are a wholly owned subsidiary of Consolidated Foods.

Q. They were acquired in 1956, is that correct?

A. In October, of 1956.

Q. By Consolidated Foods?

A. Right.

* * *

763 By Mr. Hays:

Q. Since this merger with Consolidated Foods, has Klein Super Market made purchases from Wyler and Company?

A. I am sure they have. Yes, they have, in '58 and in '57.

Q. What were the extents of those purchases?

A. Five thousand approximately in 1958, and approximately four thousand in 1957.

Q. Perhaps, you better first just describe what Klein Super Market is and where it operates.

A. We have 26 retail super markets.

Q. Where?

A. St. Paul and Minneapolis, Minnesota.

Q. Is that the extent of its operation?

A. That is right.

Q. Since the acquisition by Consolidated Foods, has Klein purchased any products from Custom Foods, Inc.?

A. To my knowledge they have not.

Q. Same question with reference to Wass Food Products?

A. We purchased about a thousand dollars in 1958 and about $1,000 in 1957.

Q. Were those private label or brand?

A. Private label in 1958.

764 Q. What were they in 1957?

A. Nationally advertised.

Q. Since the acquisition by Consolidated Foods, has Klein made any purchases from Armour and Company?

A. We have.

Q. Private label or branded products?

A. Branded products.

Q. What were the extent of those purchases?

A. 1958 about $35,000; 1957 about $35,000.

Q. Since the acquisition by Consolidated, has Klein made any purchases from Michigan Mushroom Company?

A. Not to my knowledge, no.

Q. Same question with reference to Indiana Mushroom Corporation?

A. Not to my knowledge, no.

Q. Same question with reference to Gerber Baby Foods?

A. We have purchased from Gerber.

Q. Private label or branded?

A. Branded.

Q. What was the extent of those purchases?

A. About $100,000 in 1958, and approximately the same amount in 1957.

Q. Since the acquisition by Consolidated Foods, has Klein made any purchases from Lake Odessa Canning Company?

A. In 1957 we purchased about $1,500 worth. We
765 had purchases in 1958.

Q. Was that private label or branded?

A. Private label.

Q. Since the acquisition by Consolidated Foods, has Klein made any purchases from Oscar Mayer and Company?

A. We have, about $7,000 worth in 1958 and about $7,000 worth in 1957.

Q. Were those private label or branded products?

A. Branded label.

Q. Since the acquisition by Consolidated Foods, has Klein made any purchases from Milwaukee Spice Mills?

A. Not to my knowledge.

Q. Have you ever heard of the company?

A. I have not ever personally heard of them, no.

Q. Since the acquisition by Consolidated Foods, has Klein made any purchases from Jewett and Sherman?

A. Not to my knowledge.

Q. Since the acquisition by Consolidated Foods, has Klein made any purchases from Lipton Tea?

A. We have.

Q. Private label or branded products?

A. Branded products

Q. What were the extent of those purchases?

A. Approximately $50,000 in 1958 and approximately the same amount in 1957.

766 Q. Since the acquisition by Consolidated Foods, has Klein made any purchases from Bedford Products, Inc.?

A. We have. In 1958 we purchased about $1,000 worth.

Q. Is that all?

A. That is all, yes, sir. In 1957 we purchased about $1,500 worth.

Q. Was that private label or branded?

A. That was a private label.

Q. Since the acquisition by Consolidated, has Klein made any purchases from Les Pommiers Cannery?

A. Not to my knowledge.

Q. Same question with reference to Blue Point Company?

A. Not to my knowledge.

Q. Same question with reference to Receipe Foods?

A. We have purchased 1958 about $300 worth, and 1957 about $3,000 worth.

Q. Private label or branded products?

A. Private label.

Q. Since the acquisition by Consolidated Foods, has Klein made any purchases from J. L. Read Foods?

A. In 1958 we purchased $500 worth. We had no purchases in 1957 to my knowledge.

Q. Was that private label or branded products?

A. Branded products.

Q. Since the acquisition by Consolidated Foods, has
767 Klein made any purchases from Grocery Store Products?

A. In 1958 we purchased $3,000 worth. In 1957 we purchased $4,000 worth.

Q. Is that private label or branded products?

A. Branded.

Q. Since the acquisition by Consolidated Foods, has Klein made any purchases from P. J. Ritter Company?

A. Not to my knowledge.

Q. Same question with reference to Woolson Spice Company?

A. In 1958 we purchased about $2,500, and in 1957 approximately $2,000.

Q. Is that private label or branded products?

A. Private label.

Q. Since the acquisition, has Klein made any purchases from Joseph De Frates Company?

A. Not to my knowledge.

Q. Same question with reference to Moore and Company?

A. Not to my knowledge.

Q. Same question with reference to Rival Packing Company?

A. We have had purchases from Rival. 1958 approximately $10,000 worth, 1957 approximately $7,000 worth.

Q. Were those purchases private label or branded products?

A. Branded.

Q. Since the acquisition, has Klein made any pur-
768 chases from Blue Seal Foods?

A. Not to my knowledge.

Q. Same question with reference to Wilson Canning Company?

A. Not to my knowledge.

Q. Same question with reference to the following questions, Alma Canning Company?

A. Not to my knowledge.

Q. Jay Freeman and Company?

A. Not to my knowledge.

Q. Omega Food Products?

A. Not to my knowledge.

Q. Maycliu Sales, McLean Frozen Pies, Gino Corporation, Henderson's Portion Pack, National Brands, Dixie Lily Milling Company, Nelson Brokerage Company, Elbeck Milling Company, American Frigid Dough, Capitol Food Company, Great China Food Products, Aurora Frozen Foods, Vevco Foods, Terry Foods, Morgan Packing Company, Midwest Food Packers, Gibbs and Company, Manischewitz Food Products, American Home Foods, Moore and Company, Beechnut Packing Company, Croyden House Foods, Blue Point Division of General Foods Corporation, La Fayette Packing Company, Leigh Food Products, Fred Mushroom Products Company, Hunt Foods of Ohio or California, Manning, Inc.; Jacksonville Milling Company, Barra Frozen Products, Tone Brothers, Mother's
769 Foods, Inc.; Boullo Food Products, Wagner Bros?

A. The answer is no, with the exception of three

companies; American Home, Hunt Foods of Ohio and Hunt Foods of California.

Q. What was the extent of purchases as to American Home Foods?

A. $55,000 in '58, and $60,000 in '57.

Q. Private label or branded?

A. Branded.

Q. What was the extent of purchases of Hunt of Ohio?

A. I don't have those figures with me and it would be a wild guess if I estimated.

Q. What was the extent of purchases from Hunt of California?

A. The same answer for that particular company.

Q. Can you tell us whether the sales to those two companies were more or less than some specific company that you have given, more than what company?

A. I would say they would be fairly level with the two years I am familiar with them.

Q. Were they more than a specific company that you just named, Rival, were they more than Rival Packing?

A. I would say no. Probably on an even keel with Rival.

Mr. Hays: That is all I have, Your Honor.

770 *Cross Examination*

By Mr. Walker:

Q. Has Klein opened any new stores in the last two years, Mr. Dawkins?

A. Yes, we have opened four.

Q. Have you, to the best of your knowledge, purchased anything from Venice Maid Company?

A. Not to my knowledge.

Q. Or J. J. Gielow and Sons?

A. Not to my knowledge.

Q. What products do you purchase from American Home Foods?

A. Italian Foods.

Q. The brands, please? Would those be the Chef-Boy-Ar-Dee products?

A. Yes, those are the ones.

Q. Those products are advertised locally?

A. Right.

Q. By locally, I mean in the area where Klein operates, you understand that definition throughout these questions.

A. Yes.

Q. You purchase them from a local brokerage from a local broker?

A. Yes.

Q. Did you purchase American Food Products, roughly in about the same amounts prior to 1957?

771 A. I would, in my opinion, they did. Of course, I was not there too much prior to 1957.

Q. What in your opinion accounts for this increase—I am sorry. I am looking at the wrong company here.

What products do you buy from Armour?

A. Fresh meats, soaps, and some canned meats.

Q. Are those products advertised locally?

A. They are.

Q. Did you purchase in about roughly the same volume from Armour prior to 1957?

A. I have a note here from the buyers, not much fluctuation since 1950.

Q. What products do you purchase from Gerbers?

A. Baby foods.

Q. Are those products advertised locally?

A. I am sure they are.

Q. Did you purchase in about the same volume from Gerbers prior to 1957?

A. I am sure there was a steady increase since 1950.

Q. Is that your answer, Mr. Dawkins?

A. That is my answer, yes, sir.

Q. What is that increase due to, in your opinion?

A. Well, consumer demand, more babies. Then, the national growth of our company would account for it.

Q. What products do you buy from Grocery Store Products?

772 A. Buy some macaroni products and some, if I am not mistaken, some cooked cereal.

Q. Those are advertised locally?

A. Right.

Q. Did you purchase in about the same amounts for several years prior to 1957 and '58 that you did in those years?

A. I am sure there hasn't been much variance.

Q. What products do you purchase from George A. Hormel Company?

A. Canned meats.

Q. Are those advertised locally?

A. They are.

Q. Have you purchased for a number of years prior to 1957, in about the same volume as after '57, these products from George Hormel?

A. I would say we have, since that is comparatively local industry there.

Q. What products do you purchase from Lipton Tea Company?

A. Tea and soup mix.

Q. Are those products advertised locally?

A. They are.

Q. Have your purchases for several years prior to 1957 been about the same level as in '57 and '58?

A. There has been a slight increase since 1954.

Q. What would be the reason for that increase in
773 your opinion, sir?

A. Consumer demand probably.

Q. What products do you purchase from Oscar Mayer?

A. Meat products.

Q. Did you purchase those products for several years prior to 1957 in about the same volume as you did in '57 and '58?

A. I would say, yes, we have.

Q. Are those advertised products, sir?

A. They are.

Q. What are the names of some of those products, do you know?

A. I can't think of any at the present time.

Q. You testified to minor purchases, I believe, from the Read Company in 1958. Were those advertised products, sir?

A. Since it was a single purchase, I don't know just what they were.

Q. Do you recall the occasion for that purchase?

A. No, I don't.

Q. What products do you purchase from Receipe Foods?

A. Catsup, sauces.

Q. Are those private label or advertised or both, sir?

A. Both. I have a notation here about 50 per cent were private label and about 50 per cent nationally advertised.

Q. Did you purchase products from Recipe Foods for several years prior to 1957 in about the same volume you did in 1957 and 1958?

774 A. I think in 1955 we were—we belonged to a buying group that were buying considerable—just a lot of merchandise from Recipe Foods. We discontinued that in the latter part of '55, discontinued the buying group.

Q. Since that time, you have not purchased any private label products from Recipe Foods, have you?

A. Not to my knowledge.

Q. What products do you purchase from Rival Packing Company, Sir?

A. Dog food.

Q. Is this product advertised locally?

A. It is.

Q. Did you purchase Rival Dog Food for several years prior to 1957 in about the same volume you did in 1957 and 1958?

A. I think in the last few years it has been steadily increasing, due to the—well, the advertising and different packages and so forth they have come out with, different size packages.

Q. What products do you buy from Wass Foods, sir?

A. We have been buying one item from Wass and that was open pit barbecue sauce.

Q. That product is advertised locally, is that right.

A. It was at that time. yes, sir.

Q. Did you purchase this open pit barbecue sauce from Wass in about the same volume before 1957 that you did after 1957?

775 A. Practically the same.

Q. That would be for a period of a couple years?

A. Right.

Q. What products do you buy from Wyler and Company?

A. Soup and drink mix.

Q. Are those products advertised locally?

A. They are.

Q. Would your purchases from Wyler prior to 1957 for several years be at about the same volume as during 1957 and 1958?

A. I would say they would be.

Q. Mr. Dawkins, I have not asked you specifically about each of these companies, but having in mind those that I have asked you about in this last series of questions, do you buy from a substantial number of those companies through a local broker?

A. We do.

Q. And that is true of many of these products that you testified, advertised locally?

A. That is right.

Q. What percentage of Klein's buying is done through the Chicago office of Consolidated, sir?

A. I would say less than five per cent.

Q. What was the approximate total dollar volume of your purchases in 1958?

A. Approximately $20,000,000.

776 Q. What has been the over all trend in your purchases since 1950?

A. They have been increasing with the growth of our business and new stores.

Q. Has the trend been the same as to most of your suppliers, looking at them individually?

A. I would say, yes, with few exceptions.

Q. As a practical matter, Mr. Dawkins, as to most of your suppliers, could Klein stop purchasing their products?

A. In my opinion, I would say no.

Q. Why not?

A. You just about have to give the public what they want.

Q. That would be true of these products that are advertised locally about which you have testified?

A. In other words, competition would have them, so if competition is going to have them we must have them.

Mr. Walker: No further questions.

Redirect Examination

By Mr. Hays:

Q. Mr. Dawkins, how many brands of evaporated milk do you carry in your stores?

A. I wouldn't know.

Q. Do you carry all brands? You do not know anything about what you carry in your store in the way of evaporated milk?

A. I would say we carry four.

777 Q. Do you know which four they are?

A. I am sure I do.

Q. What are they?

A. Pet, Wilson, private label, I am not sure whether we have another one or not.

Q. Do you carry Borden brand?

A. I think we do.

Q. There are a number of other brands that are available to you, are there not?

A. Probably is. I wouldn't know really.

Q. How many brands of fresh milk do you carry in your store?

A. Probably three.

Q. How many brands are available to you?

A. I would say maybe five.

Q. You do not carry all brands?

A. We don't, for two cases the supply just is not there. In other words, they couldn't give us the service we need.

Q. Who could not give you the service?

A. The two we don't carry.

Q. Are they advertised locally?

A. Yes, they are.

Q. In reference to the products you buy from American Home Foods, just specifically what were those products, sir?

A. I have got canned Italian foods.

Q. Canned Italian foods?

778 A. Right.

Q. Do you know what they were?

A. Chef Boy-Ar-Dee line.

Q. Any other brands?

A. Not to my knowledge. That is the one we use at home all the time. That is the one I am familiar with.

Q. You have testified that a number of your suppliers advertise locally. Do they advertise all the products you purchase from them or just some of them?

A. I would have no way to determine that.

Mr. Walker: I believe the testimony, to correct the record here, Mr. Hays, is that those products are advertised locally. Not that the company advertise locally. In each instance I tried to be very careful about that.

By Mr. Hays:

Q. Do they advertise all of the products you buy or just some of them?

A. I would be guessing if I told you all of them or I would be guessing if I told you some of them.

Q. Is shelf space a problem with you in your stores?

A. Shelf space is always a problem. In other words, we always build our stores too small.

Q. In other words, you have to limit the number of products which you carry in your stores. Is that correct?

A. I would say we have to limit the shelf space. And 779 along with the number of products, you are right.

Q. And for similar products, you have to limit the number of brands?

A. You are right.

Q. You have to limit the space which each brand occupies, do you not?

A. It depends, depending on how much space you have available.

Q. In your stores you do make such limitations, do you not?

A. Most cases we do, sure.

Mr. Hays: That is all, Your Honor.

Recross Examination

By Mr. Walker:

Q. Mr. Dawkins, if a considerable number of housewives come into your stores and ask for any particular product, and if you do not have that product in your store, as a general matter is it your usual practice to get and stock that product and put it in your store?

A. Definitely.

* * *

780 J. FRANK BRUMBACK, JR. was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Will you state your name and address and where you are employed.

A. J. Frank Brumback, Jr., 927 Third Street, Southeast, Roanoke, Virginia.

Q. Where are you employed, sir?

A. Roanoke, Virginia.

Q. By whom?

A. Consolidated Foods Corporation.

Q. What position do you occupy?

A. Manager of the Roanoke branch.

Q. Just to be technically correct, you are in the Monarch Finer Foods, Roanoke branch. Is that right?

A. That is right.

Mr. Walker: Excuse me, this is a division, to keep the terminology straight.

781 The Witness: Yes, division.

Mr. Walker: Let us refer to it as a division.

By Mr. Hays:

Q. Southern division, is that correct?

A. That is right.

Q. To whom do you report?

A. What do you mean, report?

Q. Who is your superior?

A. Mr. S. M. Kennedy.

Q. Are you on an equal echelon level with Mr. Heitger who was with the Monarch Finer Foods Division of Columbus?

A. I am in the same position in Roanoke as he is in Columbus.

Q. Will you describe the operation of the Monarch Finer Foods, Southern Division?

A. It is a wholesale distribution of foods.

Q. What area does it cover?

A. About a hundred miles.

Q. Hundred miles of Roanoke?

A. Yes.

Q. How long have you held your present position?

A. I have been with the Consolidated Foods Corporation since, well, I think, I don't know exactly, 1939 when Mr. Cummings took over the old Kenny Company. And I was with the old Kenny Company since 1922.

Q. How long have you had your present position?

782 A. Since 1922.

Mr. Hays: I am going to ask questions concerning the period 1951 to the present, and also at your suggestion and your request for 1949 to 1951 in the interest of brevity.

By Mr. Hays:

Q. During the period 1949 to the present, did the Monarch Finer Foods Southern Division purchase from Wyler and Company?

A. From Wyler?

Q. Wyler.

A. No, we did not.

Q. Did they purchase from Custom Foods?

A. No.

Q. Wass Food Products?

A. Yes.

Q. Did they purchase private label or branded products?

A. Private label.

Q. What was the extent of those purchases during that period.

A. We only purchased since 1955. No purchases prior to that time.

Q. What were the extents of the purchases annually from 1955 to the present?.

783 A. 1955 was $200, approximately $200; 1956, about $600; 1957, approximately $100; and no purchases in 1958.

Q. During the period 1949 to the present, did the Monarch Finer Foods Southern Division make purchases from Armour and Company?

A. We did.

Q. Were those purchases private label or branded products?

A. They were branded products—meat and milk.

Q. What were the extents of those purchases during that period?

A. No purchases prior to 1955. In 1955 we purchased approximately $4,600; 1956, approximately $6,000; 1957, approximately $26,000; 1958, about $21,500.

Q. During the period 1949 to the present, did the Monarch Finer Foods Southern Division make any purchases from Michigan Mushroom Company?

Mr. Owen: May I interrupt just a moment, because the character of the questions you are asking now is Southern Division and this is Roanoke. Mr. Hays, the same stipulation does prevail that there is no duplication in these figures, but we will have another man here that is Cumberland

that is also in the Southern Division and I just don't want to confuse you or anybody else.

Mr. Hays: Thank you. I will amend my question to refer to the Monarch Finer Foods Roanoke branch.

784 Mr. Owen: Yes.

By Mr. Hays:

Q. During the period 1949 to the present, did the Monarch Finer Foods Roanoke branch make purchases from the Michigan Mushroom Company?

A. No, we did not.

Q. Same question with reference to Indiana Mushroom Corporation?

A. No, we did not.

Q. Same question with reference to Gerber Baby Foods?

A. No.

Q. Same question with reference to Lake Odessa Canning Company?

A. No, we did not.

Q. Did you carry Gerber Baby Foods at all?

A. We have never stocked it. I believe there is one you asked me, though, that was Custom Foods. We did buy some merchandise from Custom Foods. I believe I answered no on that, but we did make some purchases from there.

Q. What were the extents of the purchases from Custom Foods?

A. No purchases prior to 1955. In 1955 we purchased approximately $400; '56, $300; in 1957, approximately $150; and in 1958 we didn't make any purchases.

Q. During the period 1949 to the present, did the Monarch Finer Foods Roanoke branch make any purchases from Lake Odessa Canning Company?

A. No.

785 Q. Same question with reference to Oscar Mayer and Company?

A. No, not that I can remember. If it was any pur-

chases, they were just very limited in the way of some specialty meats, but I don't remember that we made any purchases from them.

Q. Do you carry any of the Oscar Mayer branded meat products?

A. No.

Q. During the period 1949 to the present, did Monarch Finer Foods Roanoke branch make any purchases from Milwaukee Spice Mills?

A. No, we did not.

Q. Same question with reference to Jewett and Sherman?

A. No.

Q. Same question with reference to Lipton Tea Company?

A. We bought from Lipton Tea in 1954, first purchases.

Q. Were they branded or private label products

A. Branded.

Q. What was the extent of those purchases?

A. 1954 it was under $200; 1955, around $1,500; 1956, about $2,000; 1957, between $2,500 and $3,000; 1958, it was about $900.

Q. Prior to 1954 did you carry any Lipton products?

A. No, we did not.

Q. During the period 1949 to the present, did the Monarch Finer Foods Roanoke branch make any purchases from George A. Hormel and Company?

786 A. We did.

Q. Private label or branded products?

A. Branded.

Q. What was the extent of those purchases?

A. Prior to '53 I would say that our purchases would run approximately the same as that ran between '53 and '58. Going over this, it looks like they have averaged out about the same with the exception of one year. 1953, there

was approximately $4,000; '54, approximately $2,000; and '55, between thirty five and $4,000; and '57 around $3,700; and in '58, around $4,600.

Q. During the period 1949 to the present, did the Monarch Finer Foods, Roanoke branch make any purchases from Bedford Products?

A. We did.

Q. Private label or branded?

A. Private label.

Q. What was the extent of those purchases?

A. Between 1953 — let's see — we didn't purchase anything from those people prior to '53. Between '53 and '54, our purchases run around $1,500 to $2,000; 1955, approximately $2,500; 1956, approximately $1,000; '57, the same; and in 1958, around $800.

Q. During the period of 1949 to the present, did the Monarch Finer Foods Roanoke branch make any purchases from Les Pommiers Cannery?

A. No.

787 Q. During the period 1949 to the present, did the Monarch Finer Foods Roanoke branch make any purchases from Blue Point Company?

A. Yes, we did.

Q. Private label or branded products?

A. Private label.

Q. What was the extent of those purchases?

A. Always been small. I would say from '49 to '53 they would run about the same as they ran between '54 and '58. In 1954, they were about $200; and the same would be for '55; 1956, about $400; 1957, $150; 1958, around $300.

Q. During the period 1949 to the present, did Monarch Finer Foods, Roanoke branch, make any purchases from J. J. Gielow and Sons?

A. I don't seem to have any record but that name is

familiar. I believe they are pickle packers. I believe there was one purchase made one time.

Q. Do you know in what amount that purchase was?

A. Did they ever operate a plant in Michigan? I can't remember. I couldn't say because I don't remember. If we made any purchase it couldn't have been but one time and I don't remember when it was.

Q. During the period 1949 to the present, did Monarch Finer Foods make any purchases from Receipe Foods?

A. We did.

788. Q. Was that private label or branded products?

A. All private label.

Q. What was the extent of its purchases?

A. In 1953, it was around $5,000; 1954, between $6,500; and 1955, about $8,500; 1956, about $7,500; 1957, about $9,800; and about the same thing in 1958, about $9,800.

Q. Did you purchase before 1953?

A. We bought from '53—prior to '53 I would say our purchases average out about the same.

Q. During the period 1949 to the present, did Monarch Finer Foods Roanoke branch make any purchases of J. L. Read Company?

A. We did.

Q. Private label or branded products?

A. All private label.

Q. What was the extent of those purchases?

A. 1953, about $1,000; in '54, about $1,700; in '55, about $1,000; 1956, about $1,500; 1957, about $900; and 1958, it was under a hundred dollars.

Q. Did you make any purchases before 1953?

A. We bought in a limited way from Read in—from about 1949 up to 1953 approximately, I would say, 6, $700. Might have run up as high as $1,000.

Q. Six or seven hundred or thousand dollars a year?

A. Yes. It might run a thousand.

Q. During the period 1949 to the present, did Mon-
789 arch Finer Foods at Roanoke branch make purchases of Grocery Store Products?

A. We did.

Q. Private label or branded?

A. No, it was all branded.

Q. What was the extent of those purchases?

A. Prior to 1953, I think our purchases, from back to '49 would run about the same as they would for '53 to '58. Hasn't been much variance in it. '53 was about $1,600; and from 1954, it was between $1,500 and $2,000, approximately. The same thing for '55. In 1956 and '58 they run about $2,000.

Q. During the period 1949 to the present, did Monarch Finer Foods Roanoke branch make any purchases from P. J. Ritter Company?

A. We did.

Q. Private label or branded products?

A. All private label.

Q. What was the extent of those purchases?

A. 1953 around, approximately $800; 1954, just about $100; 1955, approximately $700; 1956, $800; 1957, $700; 1958, $800. And 1949 to '53, I would say approximately $500 a year.

Q. During the period 1949 to the present, did your branch make any purchases from the Woolson Spice Company?

A. We did.

Q. Was it private label or branded purchase?

A. All private label.

Q. What was the extent of those purchases?

790 A. No purchases prior to '56. 1956 approximately $8,000; 1957, about $3,500; and in 1958 about $4,000.

Q. During the period 1949 to the present, did your

branch make any purchases from Joseph De Frates Company?

A. No.

Q. Same question with reference to Moore and Company?

A. No.

Q. Same question with reference to Rival Packing Company?

A. Rival, no.

Q. Same question with reference to Blue Seal Foods?

A. No.

Q. Do you carry Rival products at any time during this period?

A. No.

Q. During the period 1949 to the present, if you made any purchases to any of these named companies, I wish you would so indicate them as I call them off.

A. All right.

Q. That is purchases from these companies.

A. Yes, sir.

Q. Alma Canning Company?

A. No.

Q. Jay Freeman and Company?

A. No.

Q. Omega Food Products?

A. No.

791 Q. Mayclin Sales Company?

A. No.

Q. McLean Frozen Pies?

A. No.

Q. Gino Corporation?

A. No.

Q. Henderson Portion Pack?

A. No.

Q. National Brands, Inc.?

A. No.
Q. Dixie Lily Milling Company?
A. No.
Q. Nelson Brokerage Company?
A. Nelson?
Q. Nelson.
A. No.
Q. Elbeck Milling Company?
A. No.
Q. American Frigid Company?
A. No.
Q. Capitol Food Company?
A. No.
Q. Great China Food Products?
A. We have purchased some items from Great China. I don't have a record of it, but it is a limited amount.
792 Q. Aurora Frozen Foods?
A. No.
Q. Vevco Foods?
A. No.
Q. Terry Foods?
A. No.
Q. Morgan Packing?
A. Yes.
Q. What was the extent of those purchases?
A. I don't have a record of that here. We bought a great deal of merchandise from those people.
Q. From Morgan?
A. Yes.
Q. Was it private label or branded?
A. Combination, some private label some branded.
Q. Would you obtain that figure for me?
Mr. Walker: Which one, Morgan Packing?
Mr. Hays: Yes.

Mr. Walker: May I ask a leading question? Would it be at the rate of about $10,000 a year?

The Witness: It would be, I would say approximately that.

By Mr. Hays:

Q. For each year, 1949 to the present?

A. Yes.

793 Q. During the period 1949 to the present, did your branch make any purchases from Midwest Food Packers?

A. No.

Q. Gibbs and Company?

A. Yes.

Q. Private label or branded products?

A. Branded.

Q. What was the extent of these purchases?

A. I don't have that record. Not extensive. I would say approximately $3,000 a year up to the time that Gibbs was closed down. That was in '57.

Q. They were purchased by Consolidated Foods?

A. They were purchased by our branch, myself.

Q. During the period 1949 to the present, did Monarch Finer Foods Roanoke branch make any purchases from Manischewitz Foods Products?

A. No.

Q. American Home Foods?

A. Yes.

Q. Branded or private label?

A. All branded.

Q. What was the extent of those purchases?

A. In 1953 between $5,500 and $6,000; 1954, from 3 to $3,500; 1955, about $1,500; 1956, between $2,500 and $3,000; 1957, around $5,100; 1958, about $8,500. And prior,

794 from '49 to '53, I would say our purchases would run approximately the same, a little less. Maybe about $3,500 to $4,000 a year.

Q. During the period 1949 to the present, did your branch make any purchases from Moore and Company?

A. No.

Q. Beechnut Packing Company?

A. No.

Q. Croyden House Foods?

A. No.

Q. Blue Point Division of General Foods?

A. No.

Q. La Fayette Packing Company?

A. No.

Q. Leigh Food Products?

A. No.

Q. Fred Mushroom Products?

A. No.

Q. Hunt Foods of Ohio?

A. We bought from Hunt Foods, I think some of it was billed from Ohio, but it was practically all tomato products and fruits.

Q. From California?

A. California, and some from the East Coast, New Jersey.

Q. What were the extents of those purchases?

A. Now, I don't have that. I don't have the exact 795 record, but we bought a great deal of merchandise, especially in the catsup and chili sauce, and those items.

Q. Dollar volumewise, was it more than Morgan Packing Company?

A. Approximately the same, I would think.

Q. 1949 to the present, did your branch make any purchases from Manning, Inc.?

A. No.

Q. Jacksonville Milling Company?

A. No.

Q. Barra Frozen Foods?

A. No.

Q. Tone Bros.

A. No.

Q. Mother's Foods?

A. No.

Q. Boullo Food Products?

A. No.

Q. Hoger Foods Corporation?

A. No.

Q. Wagner Bros.?

A. Wagner, no.

Q. During the period, as I understand it, the Monarch Finer Foods branch at Roanoke was engaged in a general business of wholesaling food products?

A. That is right.

796 Q. It sold to retail stores?

A. Retail stores.

Q. Chains?

A. We sold some, yes, to chains. We sold restaurants, hotels, colleges.

Mr. Hays: That is all I have, Your Honor.

Cross Examination

By Mr. Walker:

Q. A portion of your business so-called institutional sales?

A. That is right.

Q. That is the way you describe your sales to restaurants, colleges, and hotels?

A. That is right.

Q. Those are institutional packs different from the packs that are supplied to retail stores. Is that right?

A. That is right.

Q. Is that business possibly private label business or mostly other?

A. It is about 75 per cent private label.

Q. What percentage of your business would you say is institutional business?

A. About 30 per cent.

Q. Why don't you carry Gerber products?

A. Gerber?

797 Q. Yes.

A. We have never seemed to have much demand for them in our market.

Q. What about Lipton products prior to 1954; you only started those in 1954?

A. We featured our own brands of teas. We just did not seem to have much market for it and we still don't have any big market for it.

Q. What about Rival dog food?

A. I never heard of it in our market.

Q. Oscar Mayer meats, are they advertised much locally?

A. What is that?

Q. Oscar Mayer meats?

A. No. Not extensively.

Q. What products do you buy from American Home Foods?

A. I buy the Chef line of—their sauces and their spaghetti and meat balls and pizza pie mix and pizza sauces, in fact, all their sauces.

Q. Those products are advertised locally?

A. They are advertised and pushed extensively; worked by their own individual salesmen in our area, their own representatives.

Q. What would be your explanation for the increase that your purchases showed in some years from this customers.

A. Big promotion through numbers and television
798 and cash refunds to jobber salesmen.

Q. Armour products, are they advertised locally?

A. They are.

Q. Your figures showed an increase in purchases there. What would be your explanation for the increase, sir?

A. We were not carrying Armour's milk and then we took that on and that boosted our sales in total sales. Then, again, we had an increase in canned meats.

Q. Those are advertised products?

A. They are.

Q. What products do you buy from Grocery Store Products?

A. Macaroni, Foulds line, complete line of macaroni, noodles, spaghetti.

Q. Are those products advertised locally?

A. They are.

Q. Do you buy those through a broker?

A. Buy them through a broker.

Q. What products do you buy from George A. Hormel?

A. We buy spam and Dinty Moore beef stew, and pigs feet.

Q. Are those products advertised locally?

A. They are, and especially spam. It's pushed extensively. Great demand for it.

Q. When did you first purchase George Hormel products?

A. 1953.

Q. You did not purchase them at all before 1953?

799 A. We had them from, oh, back to 1949, but I believe I said our sales run approximately the same, but I expect that is correct. It has always been good. Hormel expended a lot of money in promotion of their product.

Q. What products do you buy from J. L. Read Foods, sir?

A. We buy potato salad and Monarch sauces. We did. Of course, we don't buy Monarch sauces now, but we are buying potato salad from them now.

Q. Is that potato salad a popular item locally, sir?

A. Fair.

Q. What products do you buy from P. J. Ritter Company?

A. We buy catsup and asparagus that they pack in glass.

Q. Is that catsup a private label or advertised brand?

A. It is their own advertised.

Q. That products is advertised locally

A. Yes.

Q. How do you buy that products?

A. We buy it from local broker.

Q. About what percentage of your total purchasing is through the Chicago or West Coast buying office of Consolidated?

A. About 25 per cent.

Q. What was the approximate total dollar volume of your purchases in 1958?

A. About a million and a half.

Q. What has been the overall trend of your pur-
800 chases since 1950?

A. It has been up.

Q. What has been the trend of purchases from most of your suppliers since 1950?

A. The trend from our suppliers. I would say it has been up.

Q. What in your opinion are the reasons for this growth?

A. Increase in population is one of the things, and industrialization of the Roanoke area. We have had quite a big increase in population and promotion by most of the people we purchase from are national advertisers.

Q. And the promotion of those products stimulates your sales of those products?

A. Naturally would, yes.

Mr. Walker: No further questions.

Redirect Examination

By Mr. Hays:

Q. Do you, in buying from brokers, do you buy from those brokers for the seller? They are not your brokers, are they?

A. Do I buy from—

Q. In those instances where you testified you bought these various products through brokers, they are brokers of the seller, are they not?

A. They are the seller's.

Q. The seller's brokers. They are not your brokers?

A. No, they represent the manufacturer.

* * *

802 Chicago, Illinois
June 16, 1959

803 PROCEEDINGS

Hearing Examiner Kolb: The hearing will come to order.

A. J. BISCHMAN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Will you state your name, address, and place of business.

A. A. J. Bischman, Denver, Colorado, Morey Mercantile, 16th and Wasey Street.

Q. What is your present position with the Morey Mercantile Division?

A. Division President.

Q. Is that division a part of Consolidated Foods?

A. Yes, sir.

Q. Will you describe the division's operation?

A. We operate three cash and carry houses, one in Pueblo, Colorado, two in Denver and a wholesale grocery house in Denver.

Q. What is a cash and carry house?

A. That is similar to a super market where a smaller type retailer makes his own selections, does his own hauling and pays cash. Lends itself to broken cases for smaller operators.

Q. What type of products does the division deal with?

804 A. General line cash and carrys are what we would call nationally advertised products and some private label, and with the service house it is 60 per cent private label and 40 per cent nationally advertised merchandise at the wholesale grocery operation.

Q. I understand this became a part of Consolidated Foods in 1956?

A. Yes, sir.

Q. What was it formerly?

A. Well, it was known as the Morey Mercantile with similar operations, but more expanded than at the present time.

Q. Who are you responsible to in Consolidated Foods?

A. Headquarters office under Mr. Kennedy.

Q. You have been President of the Morey Mercantile Division since 1956?

A. No, from April, 1957.

Q. What position did you hold prior to April, 1957?

A. I retired January 1. Previous to that time I was President of Consolidated Food Processors, which is a subsidiary of Consolidated Foods.

Q. Are you familiar with the suppliers of the Morey Mercantile Division?

A. Yes, sir.

Q. During the period 1956 to the present, did that Division make any purchases from Wyler and Company?

805 A. Yes, sir.

Q. Were those purchases private label products or advertised products?

A. They were packers label.

Q. That is a private label?

A. No, packers label. Wyler's label not private label.

Q. What was the extent of those purchases?

A. I don't have the purchases in '56. I can give them to you in '57 and '58. In 1957 they were $250 and the same in '58.

Q. During the period 1956 to the present, did your Division make any purchases from Custom Foods?

A. Yes, sir.

Q. Were those purchases private label or branded products?

A. They were private label.

Q. What was the extent of those purchases?

A. In '58 there were $350 and $600 in '57.

Q. Do you have the figures for the year 1956?

A. I do not.

Q. Can you estimate those figures?

A. I could not.

Q. During the period 1956 to the present, did your Division make any purchases from Wass Food Products?

A. Yes, sir.

Q. Were those purchases private label or branded products?

806 They were private label.

Q. What was the extent of those purchases?

A. In 1957 they were $150 and $3,200 in 1958. This was a new product.

Mr. Walker: Excuse me, Mr. Hays, Morey Mercan-

tile was acquired in October of 1956, so he was not prepared with any figures for 1956.

Mr. Hays: I see.

Mr. Walker: I wonder if the witness understands because of the hearing today that what the inquiry here is estimates. Is that right, Mr. Bischman?

The Witness: That is right.

By Mr. Hays:

Q. During the period 1957 to the present, did your Division make any purchases from Armour and Company?

A. Yes, sir.

Q. Were those purchases private label or branded purchases?

A. Part of it was private label and part of it was Armour's label.

Q. What was the extent of those purchases?

A. In 1958 the purchases were $12,000 and $14,000 in '57. That is the estimate, and they were about 50-50. Half of it was Easy Wash, which was a private label and the balance was Dial soap, Armour's label.

Q. During the period 1957 to the present, did your Division make any purchases from the Michigan Mushroom Company?

807 A. No, sir.

Q. The same question with reference to the Indiana Mushroom Corporation?

A. No, sir.

Q. Same question with reference to Gerber Baby Foods?

A. We purchased from Gerber baby food estimate in '58 was $21,000, and $30,000 in '57.

Q. Were those private label or branded purchases?

A. That was Gerber's branded label.

Q. During the period 1957 to the present, did your Division make any purchases from Lake Odessa Canning Company?

A. No, sir.

Q. Same question with reference to Oscar Mayer and Company?

A. Had a few purchases from Oscar Mayer.

Q. Were they private label or branded?

A. They were packer's label, nationally advertised label. In '57 they were $350 and no purchases in '58.

Q. During the period 1957 to the present, did your Division make any purchases from the Milwaukee Spice Mills?

A. No, sir.

Q. Same question with reference to Jewett and Sherman?

A. We purchased from a subsidiary of Jewett and Sherman known as Holsom Foods. In 1958 we purchased $15,000, and $9,000 in '57.

Q. Were those purchases private label?

808 A. Private label.

Q. All?

A. All of them.

Q. During the period 1957 to the present, did your Division make any purchases from Lipton Tea Company?

A. Yes, sir.

Q. Were they private label or branded purchases?

A. Branded products.

Q. What was the extent of those purchases?

A. They were $23,000 in '57 and $14,000 in '58.

Q. During the period 1957 to the present, did your Division make any purchases from George A. Hormel and Company?

A. Yes, sir.

Q. Were those purchases private label or branded products?

A. They were branded products.

Q. What was the extent of those purchases?

A. $12,000 in '57 and $10,000 in '58.

Q. During the period 1957 to the present, did your Division make any purchases from Bedford Products, Inc.?

A. No, sir.

Q. Same question with reference to Les Pommiers Cannery?

A. Who?

Q. L-e-s. P-o-m-m-i-e-r-s?

A. No, sir.

Q. During the period 1957 to the present, did your 809 Division make any purchases from the Blue Point Company?

A. No, sir

Q. Same question with reference to J. J. Gielow and Sons?

A. No, sir.

Q. Same question with reference to Receipe Foods?

A. No, sir.

Q. Same question with reference to J. L. Read Foods?

A. We purchased from J. L. Read.

Q. Were those purchases private label or branded?

A. Private label.

Q. What was the extent of those purchases?

A. They were $1,100 in '58. That was a new item and no previous purchases.

Q. During the period 1957 to the present, did your Division make any purchases from Grocery Store Products?

A. Yes, sir.

Q. Were those purchases private label or branded?

A. They were branded label.

Q. What was the extent of those purchases?

A. In '57 they were $1,700 and $1,500 in '58.

Q. During the period 1957 to the present, did your Division make any purchases from P. J. Ritter Company?

A. No, sir.

Q. Same question with reference to Woolson Spice Company?

A. We purchased from Woolson Spice Company.

810 Q. Were those purchases private label or branded products?

A. Private label.

Q. What was the extent of those purchases?

A. In 1957 they were $5,000 and '58 they were $17,000.

Q. During the period 1957 to the present, did your Division make any purchases from Joseph De Frates Company?

A. No, sir.

Q. Same question with reference to Moore and Company?

A. No, sir.

Q. Same question with reference to Rival Packing Company?

A. No, sir.

Q. Same question with reference to Blue Seal Foods?

A. No, sir.

Q. Mr. Bischman, I am going down a list of companies and if your Division made any purchases during the period 1957 to the present, will you indicate yes. If no, will you indicate no. Alma Canning Company?

A. Yes.

Q. Private label or branded products?

A. That was private label.

Q. What was the extent of those purchases?

A. Well, that would be in '58, be approximately $800.

Q. Jay Freeman and Company?

A. No.

Q. Omega Food Products?

811 A. No.

Q. Mayclin Sales Company?

A. No.

Q. McLean Frozen Pies?
A. No.
Q. Gino Corporation?
A. No.
Q. Henderson Portion Pack?
A. No, sir.
Q. National Brands, Inc.?
A. No.
Q. Dixie Lily Milling Company?
A. No.
Q. Nelson Brokerage Company?
A. No.
Q. Elbeck Milling Company?
A. No.
Q. American Frigid Company?
A. No.
Q. Capitol Food Company?
A. No.
Q. Great China Food Products?
A. No.
Q. Aurora Frozen Foods?
A. Aurora Frozen Foods, we had purchases from them.

812 Q. What were the extent of those purchases?
A. In 1958 they were $90. Nothing in 1957. It was a new item.

Q. Vevco Foods?
A. No.
Q. Terry Foods?
A. No.
Q. Morgan Packing Company?
A. No.
Q. Midwest Food Packers?
A. No.
Q. Gibbs and Company?
A. No.

Q. Manischewitz Food Products?
A. No.
Q. American Home Foods?
A. Yes.
Q. Private label or branded products?
A. Part of it was private label and part of it would be branded products.
Q. What were the extents of those purchases?
A. In 1957 there were $1,400 and $5,700 in '58.
Q. $1,400 for each year?
A. $1,400 for each year and $5,700 for '58.
Q. Moore and Company?
813 A. No.
Q. Beechnut Packing Company?
A. Yes.
Q. What were the extents of those purchases?
A. Very slight. Approximately $300, $350 a year.
Q. Croyden House Foods?
A. Yes.
Q. Blue Points Division of General Foods?
A. No.
Q. LaFayette Packing Company?
A. No.
Q. Leigh Food Products?
A. No.
Q. Fred Mushroom Products?
A. No.
Q. Hunt Foods?
A. No.
Manning, Inc.?
No.
Q. Jacksonville Milling Company?
A. No.
Q. Barra Frozen Foods?
A. No.

Q. Tone Bros.?

A. No.

814 Q. Mother's Foods?

A. No.

Q. Boullo Food Products?

A. No.

Q. The Hoger Corporation?

A. No.

Q. Wagner Bros?

A. No.

Q. Did I miss two? You have two slips in your hand.

A. Frank M. Wilson.

Q. F. M. Wilson Canning Company?

A. Yes.

Q. What was the extent of those purchases?

A. In 1957 they were $48,000 and in '58 they were $31,000.

Q. Were those private label or branded?

A. That is private label.

Mr. Hays: That is all I have.

Cross Examination

By Mr. Walker:

Q. How did you happen to buy from Alma in 1958, Mr. Bischman?

A. From whom?

Q. Alma Canning Company.

A. We had one purchase from them. That was placed through Central Buying Office.

Q. To your knowledge, did Morey Mercantile pur-
815 chase any products from Beechnut Packing Company prior to 1957?

A. Yes.

Q. Would those purchases have been at about the same or a greater volume than in 1957?

A. They were in excess.

Q. The figures you gave showed an increase in purchases from American Home Foods, 1957 and 1958. What is the reason for that increase in your opinion. Mr. Bischman?

A. It would be in the cash and carry. They were items that were put into the cash and carry and due to promotion on the packer's label.

Q. What are those products that you purchased from American Home Foods?

A. Well, they are mainly Chef Boy-Ar-Dee.

Q. Did Morey purchase those products prior to 1957?

A. Yes, sir.

Q. Would that be at what volume in comparison to 1957?

A. I would say it would be considerable in excess.

Q. Before 1957 considerable in excess of 1957?

A. That is right.

Q. Do you buy those products from a local broker?

A. Right.

Q. What products do you purchase from Armour and Company?

A. Easy Wash and Dial Soap.

Q. Did you purchase those products prior to 1957?

816 A. They had soap products, but Easy Wash is placed through—that is our private label.

Q. Were the products purchased for several years prior to 1957 in a greater volume than in 1957?

A. I would say yes.

Q. What products do you purchase from Gerbers?

A. Baby foods.

Q. Are those products advertised locally?

A. Yes, sir.

Q. Would you say that Morey's purchases prior to 1957 were in greater volume than during 1957?

A. They would be greater.

Q. What products do you purchase from Grocery Store Products?

A. We purchase several different items. Cream of Rice and Kitchen Bouquet.

Q. That is advertised products?

A. Those are nationally advertised.

Q. Do you purchase those from a local broker.

A. From a local broker.

Q. Would Morey's purchases for several years prior to 1957 be in greater volume than during 1957?

A. They had been greater.

Q. What products do you purchase from Hormel?

A. Spam and Dinty Moore beef stew.

Q. Those products are advertised locally?

817 A. Yes, sir.

Q. Do you purchase those products from a local broker?

A. From factory representatives.

Q. Would Morey's purchases from Hormel be for several years prior to 1957 greater than during 1957?

A. I would say greater.

Q. What products do you purchase from Lipton Tea Company?

A. Dehydrated soups and tea.

Q. Those are products which are advertised locally?

A. Yes, sir.

Q. Would you say that Morey's purchases from Lipton for several years prior to 1957 were greater than during '57?

A. They would be greater, I would say.

Q. What products do you purchase from Oscar Mayer?

A. We have packer's label canned meat.

Q. Those are advertised products?

A. That is right.

Q. Did you purchase those from a broker?

A. Right.

Q. Before 1957, did you purchase products from the F. M. Wilson Canning Company?

A. Before 1957?

Q. Yes, did Morey—

A. I am sure Morey purchased private label merchandise from Frank M. Wilson.

818 Q. What products does Morey buy from Wyler and Company?

A. Parsley flakes and garlic seasoning.

Q. Are those locally advertised products?

A. Yes.

Q. Do you purchase those from a broker?

A. No, from the representative.

Q. About what percentage of your total purchases are made through the Chicago purchasing office and West Coast office of Consolidated?

A. Twenty-five per cent.

Q. What was the total dollar volume of your food purchases in 1958?

A. Would you want them combined? We have them separate for cash and carry purchases.

Q. Just the total.

A. Purchases would be about two million one.

Mr. Walker: No further questions.

Redirect Examination

By Mr. Hays:

Q. Just a few questions, Mr. Bischman. In the instances where you have indicated an answer to Mr. Walker's questions that you purchased from brokers, were those brokers representatives of the seller?

A. They were representatives of the seller.

Q. Prior to 1957, that is prior to the acquisition of
819 the Morey Company by Consolidated Foods, did you have any other concern making purchases for you?

A. Well, I—you say prior to the Consolidated purchase?

Q. Yes.

A. They would do their own buying.

Q. Since the acquisition by Consolidated, you do not purchase all of the products used by the Morey Division? Is that correct?

A. Well, Morey had their own label, their private label which was changed into the Consolidated label. A good many of the suppliers packed for Morey also pack for us.

Q. The question is, since the Consolidated acquisition of the Morey Company, I believe you testified that approximately 25 per cent of the purchases come through the Consolidated Foods buying division, is that correct?

A. Right.

Q. Now, sir, since the acquisition by Consolidated Foods, have you taken on any private label products that you did not have before?

A. We have our own label, Consolidated label in the Morey which it wasn't in before.

Q. What type of products bar [sic] those private labels of Consolidated Foods?

A. That would be canned foods, condiments, specialty items.

Q. Canned meats?

820 A. Canned meats and canned foods, fruit, vegetables.

* * *

A. B. SCHAEFER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Will you state your name, address, and place of business.

A. A. B. Schaefer. Address is 1401 Fairfax Trafficway, in Kansas City, Kansas. That is my business address.

Q. Where are you employed, sir?

A. The Leigh Foods Division in Kansas City, Kansas.

Q. How long have you been employed there?

A. Two years.

Q. What is your present position with the Leigh Foods Division?

821 A. I am president of the Leigh Foods Division.

Q. Did you have a position prior to that time?

A. Yes, I did.

Q. What was that position?

A. I was Assistant Sales Manager for the Morey Mercantile Division in Denver from — under Consolidated Foods — from time of acquisition, which would be about August of '56 to July of '57.

Q. How long has the Leigh Foods Division been in operation?

A. The Division has been in operation since about 1951 as part of Consolidated Foods. It was acquired from the H. D. Leigh Company in Kansas City and they must have been in business for over 70 years.

Q. What is the business of the Leigh Foods Division?

A. We are suppliers to institutional trade, such as, hospitals, schools, camps, hotels, restaurants, and businesses of that type.

Q. Suppliers of food products?

A. Food products and other products.

Q. What other products?

A. There would be detergents, paper products.

Q. Items found in grocery stores mainly?

A. Items but not of the same size, sir, that would be found in the grocery store.

Q. Larger size purchases?

A. That would be right. Although you would have
822 some items that would blend between the two businesses.

Q. Are you familiar with the purchases by the Leigh Foods Division since 1951?

A. Not to be accurate since 1951. Our records go back as far as the last half of 1954. From that time on, I am, more or less, familiar and I do have some knowledge of the preceding.

Q. You are able to give an estimate during the years 1951 to the present, I understand?

A. An estimate in some cases, supposition in some cases; being definite, no.

Q. They would be more accurate since 1954 though?

A. Very much more accurate, but they would still be estimates.

Q. You have been in the hearing room and you have heard me ask a series of questions of the other witnesses?

A. Yes, sir.

Q. Do you understand that if I ask you a broad question, that is what purchases — strike that, please.

If I give you a list of companies, will you tell me for the years 1951 to the present whether the Leigh Foods Division has made any purchases from each of these named companies? If so, whether they are private label or branded products, and the amount for each of the years since 1951. Can you do that?

A. Not with complete accuracy.

823 Q. But you understand what I am asking for any just state the name of the company. Is that right?

A. Yes, sir. And I would know, I think I would know definitely from '54 on, sir.

Q. All right, sir. Wyler and Company?

A. We do purchase from them.

Q. Will you just give me the amount for each of the years and whether or not it is private label or branded products?

A. Yes, sir. It is all private label business since 1954. It runs about $400.

Q. Per year?

A. No, in 1954. 1955 around $3,000; '56 about $6,000; '57, about $7,000; and '58, about $9,000.

Q. Can you make any estimates for the period 1951 to 1954?

A. I would say this: That they would be purchasing from them, but I would say they would be smaller than the $400.

Mr. Walker: Excuse me, Mr. Hays, perhaps I could help. I do not think Mr. Schaefer understands what you want him to do. When he gives you the name of the company, will you just start with 1951, give your estimate for 1951 right on down through the years from 1951 to the present. Start right at '51, give an estimate year by year coming right on down to 1958 for each one of these companies.

The Witness: I will try.

By Mr. Hays:

824 Q. Custom Foods?

A. No purchases.

Q. Wass Food Products?

A. No purchases.

Q. Armour and Company?

A. We do purchase from them. In 1951 to 1954, I am

not in position to make an estimate. But starting with 1954 and, by the way, this is the last half of 1954, it was about $4,000; 1955, $14,000; 1956, $525; 1957, nothing; and 1958, $335. Those are about —

Q. Were those private label or branded purchases?

A. Those were all branded.

Q. Are you able to state whether any purchases were made during the period 1951 through 1954 without regard to the amount?

A. Yes.

Q. Purchases were made from Armour and Company during those years?

A. Purchases were made.

Q. Michigan Mushroom Company?

Mr. Walker: Excuse me, Your Honor, could we take a brief recess?

Hearing Examiner Kolb: All right. We will recess for five minutes.

(Short recess.)

825 Hearing Examiner Kolb: On the record.

By Mr. Hays:

Q. Do you have an estimate as to the amount of sales from Armour and Company during the years 1951 to 1954?

A. I can make one, sir.

Q. Yes, sir, please do, sir.

A. I would judge it to be about $4,000 in each of those years from '51 to '54.

Q. Michigan Mushroom Company?

A. I would judge that to be around $500 to a thousand per year from 1951 through '54.

Q. What are the figures since 1954?

A. In 1954 they are around $500. In '55 and '56, they would run between a thousand and $1,500.

Q. For each of those years?

A. Yes, sir, for each of those years. In '57 and '58, they would be about the same, a thousand dollars.

Q. About the same as what?

A. As the other years, about a thousand dollars per year.

Q. What were those purchases, private label or branded products?

A. Private label, sir.

Q. Indiana Mushroom Company?

A. No purchases that I know of.

Q. Gerber Baby Foods?

826 A. Yes, sir. That business was growing. From 1951 to '54, from $20,000 to $22,000; $25,000; something like that.

Q. Each year?

A. For each year, yes, sir. In 1954, around $22,000, and 1955, around $35,000, and nothing since.

Q. Were those private label or branded products?

A. That is all branded, sir.

Q. Since 1956 have you handled Gerber products?

A. Not buying them, sir. We have picked up occasionally from some other supplier a competitor or something like that, to fill in a special order for a customer as a favor. As far as handling it, we do not.

Q. Lake Odessa Canning Company?

A. No, sir.

Q. Oscar Mayer and Company?

A. I am not in position, I know nothing about the purchases of Oscar Mayer. We do not at the present time.

Q. Milwaukee Spice Mills?

A. Not that I know of.

Q. Jewett and Sherman?

A. We buy from Holsom who is a subsidiary of theirs. From 1951 to '54 would judge their purchases to be between 35 and 40 thousand per year, and 1954, around

$40,000. In '55, around $55,000; '56, $55,000; in '57, around $55,000 and in '58, around $50,000.

827 Q. Were those private label or branded products?

A. It is all private label in this case.

Q. Lipton Tea Company?

A. Yes, sir. 1951 to '54 in each case, each year, around 15; $17,000; 1954, around $17,000; 1955, around $33,000; '56, about $3,800; and '57, around $2,500. Nothing in '58.

Q. Were those private label or branded products?

A. All branded.

Q. Do you handle Lipton Tea Company products at all since 1957?

A. During 1957 we had some items.

Q. In 1958 did you have any of those items?

A. Not unless they were left from a '57 purchase, but I would say the stock would be cleaned up.

Q. You do not handle Lipton Tea Company products, now?

A. No, sir.

Q. George A. Hormel and Company?

A. Yes, sir. Purchases from 1951 through 1954, I would estimate might be $5,000 for each year; in 1955, $13,000; around $4,000 in '56; around $2,000 in '57; and in '58 about $12,000.

Q. Were those branded or private label?

A. Both. In the early years, I would say up to '54 they would be all private label, and in '55 it began to switch over —I beg your pardon. I say up to '54 would be all

828 branded label, and in '55 it started to switch over to private label until this last year, 1958 where 25 per cent of our purchases were branded label.

Q. Bedford Products?

A. In 1951 through '54 they would average around $25,000 per year; '54, '55, around $20,000; 15 to 20,000, in there;

in '56, around $6,000; '57, around 24,000, and in 1958 around 20,000.

Q. Were those private label or branded products?

A. Private label.

Q. Les Pommiers Cannery?

A. I do not know anything about them.

Q. Blue Point Company?

A. Yes, sir. In 1957, around $150; in 1958, around $1,500. I have no record—knowledge of anything previous to those years.

Q. Were those private label or branded products?

A. Private label.

Q. J. J. Gielow and Sons?

A. In 1951 to 1954 I would estimate they would run around $500 per year. In 1955 through—in 1955 there were no purchases that I know of; 1956, around $1,200, and none since.

Q. Were those private label or branded?

A. All private label.

Q. Recipe Foods?

A. No record whatsoever on it.

829 Q. J. L. Read Foods?

A. Yes, sir. The only knowledge I have of anything during 1955 and 1956 would vary between $100 and $200 for each year. Nothing since that time.

Q. Grocery Store Products?

A. Yes, sir. In 1951 through 1954 I would estimate the purchases to be about a thousand dollars per year; 1955, about $1,500; 1956, about $1,300; 1957, around $1,200; 1958, about $900.

Q. Were those private label or branded products?

A. That is all branded, sir.

Q. P. J. Ritter Company?

A. I only have knowledge of one purchase, sir, 1957 for around $100.

Q. Woolson Spice Company?

A. Yes, sir. In 1951 to '54 the Leigh Foods Division were packing and grinding their own spices so I would say at that time there would be very nominal purchases of anything, probably to fill in in case there were a shortage or something like that. 1954 to 1955 there was from four to five thousand dollars each year on that; 1956, '57, and '58 has run from twenty to twenty-five thousand dollars per year.

Q. Were those private label or branded products?

A. Private label, sir.

Q. Joseph De Frates Company?

830 A. I know nothing of them.

Q. Moore and Company?

A. Know nothing about them, sir.

Q. Rival Packing Company?

A. Yes, sir. As far as I know there is one purchase in 1955, around $250.

Q. Was that a private label or branded?

A. I am sure that would be branded, sir.

Q. Do you handle the products of the Rival Packing Company?

A. No, sir, not today. As far as I know I believe this company is a producer or cannery of dog food.

Q. Yes.

A. We do not carry it.

Q. Blue Seal Foods?

A. No, sir, no purchases.

Q. F. M. Wilson Canning Company?

A. Yes, sir. From '51 to '54 I would judge the purchases to be between five and ten thousand dollars per year. In 1954, around five thousand; '55, around fifteen thousand; '56, about eight thousand; '57, about twenty-seven thousand; and '58, about twenty-three-twenty-five thousand.

Q. Were those private label or branded products?
A. Private label, sir.
Q. Alma Canning Company?
A. We make purchases from them. I would judge
831 that that business would run about steady from 1951 through the present time, and I am judging that business, estimating that business to be around $15,000 per year.
Q. Is that private label or—
A. Private label, sir.
Q. All private label?
A. All private label.
Q. Jay Freeman and Company?
A. I do not know the firm.
Q. Omega Food Products?
A. Do not know them.
Q. Mayclin Sales Company?
A. No, sir, no purchases.
Q. McLean Frozen Pies?
A. No purchases.
Q. Gino Corporation?
A. No purchases.
Q. Henderson's Portion Pack?
A. No purchases I know of.
Q. National brands?
A. None that I know of, sir.
Q. Dixie Lily Milling Company?
A. None that I know of.
Q. Nelson Brokerage Company?
A. None that I know of, sir.
832 Q. Elbeck Milling Company?
A. None that I know of.
Q. American Frigid Company?
A. No purchases that I know of.
Q. Capitol Food Company?
A. No purchases that I know of.

Q. Great China Food Products?

A. Yes. I would be acquainted with the Great China Food Products for the last two years. I would estimate our purchases in the last two years to be around ten thousand each year.

Q. Were those private label or branded?

A. Those would be private label, sir.

Q. Do you have any information or estimates for the years before 1956?

A. No, sir. It would depend on if we were buying from that firm or not. I would have an idea what their purchases would be, I would say.

Q. Were they buying from that firm?

A. I do not know before 1956.

Q. Aurora Frozen Foods?

A. No purchases I know of.

Q. Vevco Foods?

A. Never heard of them.

Q. Terry Foods?

833 A. Never heard of them.

Q. Morgan Packing Company?

A. One purchase that I know of in 1957, estimated to be about $3,000.

Q. Is that all?

A. Yes.

Q. Private label or branded?

A. That would be private label, sir.

Q. Midwest Food Packers?

A. Do not know them.

Q. Gibbs and Company?

A. I do not know of any purchases.

Q. Manischewitz Foods Products?

A. I do not know of any purchases.

Q. American Home Foods?

A. Yes, sir.

Q. To what extent?

A. I would judge from 1951 to 1954, it would be around two thousand to twenty-five hundred dollars per year; 1955, about $5,000; '57 [sic] and '57 about $200 each year; 1958, about a thousand dollars.

Q. Were those private label or branded products?

A. Since '56, it has been all private label. Before that it was both.

Q. Have you made any packer label American 834 Home Food purchases since 1956?

A. No.

Q. Do you handle that line, American Home Foods at all?

A. Not under that label, sir. We do buy products from them but it has our own label on it.

Q. Not any American Home Food branded products?

A. No, sir.

Q. Moore and Company?

A. Do not know of any purchases.

Q. Beechnut Packing Company?

A. I do not know of any purchases.

Q. Croyden House Foods?

A. I do not know of any purchases.

Q. Blue Point Division of General Foods Corporation?

A. Yes, sir. In 1957, about $150; and in 1958, about $1,500 purchased.

Q. Were those private label or branded?

A. Private label.

Q. LaFayette Packing Company?

A. I do not know them.

Q. Leigh Food Products?

A. No purchases I know of.

Q. Fred Mushroom Products?

A. No purchases I know of.

Q. Hunt Foods of Ohio?

835 A. No purchases I know of.

Q. Hunt Foods of California?

A. Yes.

Q. What were the extents of those purchases?

A. 1958 around a thousand dollars, possibly five hundred dollars in '57, possible chance, but I don't think so.

Q. Is that all you know about?

A. Yes, sir.

Q. Were those private label or branded sales?

A. That was branded.

Q. Manning, Inc.?

A. I do not know them.

Q. Jacksonville Milling Company?

A. Do not know of any purchases.

Q. Barra Frozen Foods?

A. No purchases.

Q. Tone Bros?

A. No purchases.

Q. Mother's Foods?

A. No purchases.

Q. Boullo Food Products?

A. No purchases.

Q. Hoger Corporation?

A. No purchases.

Q. Wagner Bros?

836 A. No purchases.

Q. Mr. Hays: That is all I have, Your Honor.

Cross Examination

By Mr. Walker:

Q. Mr. Schaefer, as to a number of the companies that Mr. Hays asked you about, you replied, "I do not know of the Company, I never heard of the company," and sometimes you said, "No purchases." Do I understand your

testimony to be that where you said I do not know of the company, or that you never heard of the company, that you meant that to the best of your knowledge Leigh Foods Division had not purchased from the company during the period asked about?

A. To the best of my knowledge there were no purchases made. Is that right, sir?

Q. To the best of your knowledge, did Leigh purchase from Alma Canning Company prior to 1951?

A. To the best of my knowledge, yes.

Q. Are those products used in your institutional business?

A. Yes, sir.

Q. Why have you not purchased any advertised brand products from American Home Foods since about 1956?

A. There have been, I would say, no demand for the products as a label product. There is a demand for their product.

Q. I am talking about their branded product.

A. There is no demand for it.

837 Q. What has your business largely been since 1956?

A. Institutional business and private label business.

Q. During the period 19— well, let us take 1958. In 1958 approximately what percentage of your business, total business was noninstitutional?

A. Less than one per cent.

Q. Would the same thing be true in 1957?

A. Yes, sir.

Q. Would the same thing be true in 1956?

A. No.

Q. It was more?

A. More in 1956. Leigh at that time, during 1956, had quit supplying the retailer.

Q. So far as your institutional business is concerned, this business does not include the branded products of the type that are sold in grocery stores. Is that right, sir?

A. That is true.

Q. To the best of your knowledge, did Leigh purchase from American Home Foods prior to 1951?

A. Yes.

Q. To the best of your knowledge, did Leigh purchase from Armour and Company prior to 1951?

A. Yes, sir.

Q. The products purchased from Armour have been both institutional and retail store products over the 838 years, is that right?

A. Yes, sir.

Q. In your testimony you indicated an increase in your purchases from Bedford Products in recent years. What in your opinion is the explanation for that increase, sir?

A. Well, Bedford Products packed a jelly and preserve in No. 5 key opening tin. They got away from the glass breakage. One account in particular was very interested in that. I believe they were the first people out with this key opening tin, and, of course, our customers liked that and business built from that. In fact, we have built business on it.

Q. What users were those, Mr. Schaefer?

A. Well, Fred Harvey account if you want the name of the account is the large user of this and because of the railroad, in other words, on the trains it gets away from breakage in the glass jars.

Q. Were these institutional users?

A. Yes.

Q. That No. 5 pack is an institutional pack?

A. Oh, definitely. In fact, it has no eye appeal whatsoever. It is a tin can.

Q. Have you purchased institutional products from the Blue Point Company, sir?

A. The only products we have bought from them is an institutional product.

839 Q. Do you purchase the Blue Point Products from a broker?

A. Yes, sir. I believe it was from the salesman himself.

Q. Have you purchased Bedford products from the broker?

A. From the salesman.

Q. Why have you not purchased any products from Gerber in recent years, Mr. Schaefer?

A. We have discontinued supplying the retailer, and retail stores where the baby foods are sold. They are not sold in hospitals and hotels and the class of trade we are soliciting now.

Q. To the best of your knowledge did Leigh purchase from Gerbers prior to 1951?

A. I know they did.

Q. What products does Leigh purchase from Grocery Store Products?

A. Kitchen Bouquet, sir.

Q. That is now for the institutional trade?

A. That is for the institutional trade. It was for retail trade. We developed a business supplying the retailer, and the only thing that has happened we have changed the size of the package we buy from them.

Q. Do you purchase that from a broker, sir?

A. Yes, sir.

Q. To the best of your knowledge, did Leigh purchase from Grocery Store Products prior to 1951?

840 A. Yes, sir.

Q. I believe, correct me if I am wrong, Mr. Schaefer, that you testified on direct examination that you had large institutional purchases from the Hormel Company in recent years.

A. That is right.

Q. What types of products are those, sir?

A. We have two items. One is a ham shank in a No. 10 tin, about six pounds and 12 ounces net weight in it. The other is a 50 pound cube of shortening that they give. The shortening is under their brand name.

Q. During the years you were supplying retailers, what products did you purchase for retailers?

A. Spam, Dinty Moore beef stew, any number of canned items, canned meat items.

Q. Did you purchase those products from a broker?

A. Yes.

Q. To the best of your knowledge, did Leigh purchase from Hormel prior to 1951?

A. Yes, sir.

Q. What types of products have you purchased in recent years from the Holsom Division, Jewett and Sherman?

A. Salad dressing, olives, honey, peanut butter.

Q. Are those for the institutional trade, sir?

A. Yes, sir. Only.

Q. To the best of your knowledge did Leigh pur-
841 chase from Jewett and Sherman prior to 1951?

A. Yes.

Q. Why has Leigh not purchased as many products from Lipton Company since 1956?

A. The Lipton's label is primarily for the consumer; the housewife. In very few instances do they pack items for institutional trade. Where they have packed that item they have not put the sales effort back of it. There has been no demand.

Q. To the best of your knowledge, did Leigh purchase from Lipton prior to 1951?

A. Yes.

Q. To the best of your knowledge, did Leigh purchase from Michigan Mushroom Company prior to 1951?

A. Yes, sir.

Q. What products has Leigh purchased from the F. M. Wilson Canning Company in recent years?

A. Items in canned fruits and canned spinach.

Q. Are those products for the institutional trade?

A. Institutional trade only, sir.

Q. Has the F. M. Wilson Packing Company increased its attention given to institutional products in recent years?

A. Yes, they have. While they do pack other sizes their main effort has been towards supplying institutional packages, No. 10 merchandise.

842 Q. To the best of your knowledge, did Leigh purchase from F. M. Wilson Canning Company prior to 1951?

A. Yes, they did.

Q. Does Leigh purchase products from Wyler and Company from a broker?

A. Yes, they do.

Q. Approximately what percentage of your buying is done through the Chicago and West Coast buying offices of Consolidated, Mr. Schaefer?

A. Twenty per cent I would say of the two, combining the two.

Q. What was the approximate total dollar volume of your purchases in 1958?

A. Two million dollars.

Q. Were your purchases of products from the Great China Food Products that you testified to in recent years for your institutional business?

A. That is right, sir.

Q. What types of products were they?

A. Chow mein noodles, and Chinese foods.

Mr. Walker: No further questions.

Redirect Examination

By Mr. Hays:

Q. Just a few questions, sir. When you refer to institutional users of these products, it is my under-
843 standing that you mean that these users take the products that they buy and prepare meals which they sell to the public? Is that correct?

A. Served to the public would be better.

Q. In other words, they do not resell to the public in the original containers in which they come?

A. That is right.

Q. Such as hotels and restaurants, that is, mainly the institutions to which you refer, is that right?

A. I would have to include schools, sir, that their main business is not serving food, if you see what I mean, but they serve a noon meal. In plant feeding, like automobile plants, they run that as an employee benefit, but they are not actually in the food business.

Q. On the basis of your experience isn't it true that these consumer purchases of these prepared meals do not ask for a meal by a brand do they, obviously?

A. That is right.

Mr. Hays: That is all I have.

Recross Examination

By Mr. Walker:

Q. Do you have your own private label, Mr. Schaefer?

A. Yes, we do.

Q. What is that called?

A. Lee. We have three or four of our own private
844 labels; Lee, Summer Girl, Mother Goose, and Cadet.

Q. These labels are on the products you sell to institutional users?

A. That is right.

Q. Do you buy your products for these private labels through the Consolidated central buying office?

A. I would say very few of them, sir. There are occasions when we ask them to do purchasing for us.

Q. Except for those occasions you make your own selection of your private label supply?

A. That is right. Absolutely right.

Q. Is it true that most of your purchases through the central buying office of Consolidated are the fruits from California?

A. That is through the West Coast buying office, fruits from California.

Q. That is what I meant to say. Thank you sir.

Further Redirect Examination

By Mr. Hays:

Q. A few more questions on this now: When you say you make your own selection of suppliers of the private label, do you make that selection from an approved list of suppliers?

A. No, sir. We make that selection through samples. In other words, we ask this packer to send us samples.

We cut them against other products of that of a simi-
845 lar nature, other packers.

Q. Then, you do not buy from any approved list of suppliers, approved by the Consolidated Foods Purchasing Department. Is that correct?

A. Mr. Hays, we can use it as a guide in case we want to know what source of supply, if we need something, but it is not, in our particular instance, it is not mandatory to do that. We handle different items than what other Consolidated Divisions do.

Q. You are familiar with the list of approved suppliers of Consolidated Foods Corporation, are you not?

A. By being familiar I know there is one. I know we have one. As far as using it for buying, we use it very, I would say, rarely, sir.

Q. Do you know whether or not the companies that you have testified you purchased private label products from, whether or not they are on the approved list?

A. Sir, I can not think of any, honestly can't think of any. There must be, but I can't think of any right now that is on the approved list.

Q. You do not know whether or not they are on the approved list?

A. That is right, sir.

Q. Have you ever seen the approved list?

A. Yes, sir.

846 Q. When, sir?

A. Possibly last week, I think. It is in book form.

Q. Is that list changed from time to time?

A. From time to time. Now, as to source of supply I do not know. As to prices I would say yes.

* * *

ROBERT Q. WHITELY was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Will you state your name and address, sir.

A. Robert Q. Whitely, Rockford, Illinois.

Q. Where you employed, sir?

A. I am employed by the Piggly Wiggly Midwest Company, Inc., 1009 West Jefferson Street, Rockford, Illinois.

Q. Is that a subsidiary of Consolidated Foods?

A. That is a subsidiary of Consolidated Foods.

Q. How long has it been a subsidiary?

A. Since mid 1956.

847 Q. You have held your position since mid 1956?

A. I have been, I have been with Midwest since 1945. I have been an officer of the company since 1948.

Q. Will you describe the company's operations?

A. Well, basically, we are in the business of operating retail super markets.

Q. Where, sir?

A. We are operating super markets in Illinois, Wisconsin, and Iowa.

Q. Are you familiar with the sources of supply of the Piggly Wiggly Midwest Company?

A. Yes, sir, I am.

Q. Will you understand for the period 1956 to the present for each of those years, that when I state the name of the company you will state whether or not any purchases have been made from that company and if so, whether or not it was private label or branded products and further, the annual amount?

A. Yes, sir.

Q. And the annual amount, it is understood, will be your best estimate?

A. Yes, sir.

Q. I assume it would be a fairly reliable one since you do have records since 1956?

A. Yes, sir, they would be pretty good estimates.

848 Q. Wyler and Company?

A. Yes, we do purchase from Wyler. Our purchases, 1957, would be about $4,000 and about $7,000 in 1958. There would be approximately $4,000 in 1956.

Q. Private label or branded?

A. It is a brand label. Advertised brand label.

Q. Custom Foods?

A. No purchases from Custom Foods.

• • •

By Mr. Hays:

Q. Wass Food Products?

A. Wass Food, we have had a private label purchase, several thousand dollars in '56 and '57, and about $4,000 in 1958.

Q. Armour and Company?

A. Armour and Company, advertised brands, a small relatively small purchase of private label, Easy Wash. Our purchases from Armour and Company in 1957, $1,400,000; 1958, $1,700,000; and about $1,200,000 in 1956. Now, the significant part of this purchase would be in the area of fresh meat.

Q. How many super market stores do you have, sir?

A. Currently we have 49.

849 Q. Michigan Mushroom Company?

A. No purchases.

Q. Indiana Mushroom Corporation?

A. No purchases.

Q. Gerber Baby Foods?

A. Gerber Baby Foods, advertised brand, our purchases in 1957, one hundred sixty-five thousand; in 1958, two hundred eighty-five thousand, and about one hundred forty thousand in 1956.

Q. Lake Odessa Canning Company?

A. No purchases.

Q. Oscar Mayer and Company?

A. Oscar Mayer is a national advertised brand. Our purchases in 1957 were four hundred fifty thousand. Our purchases in 1958 were six hundred thousand, and our purchases in '56, oh, I would estimate about three hundred seventy-five thousand. Again, the significant part of our purchase would be in the area of fresh meat.

Q. Milwaukee Spice Mills?

A. No purchases.

Q. Jewett and Sherman?

A. Jewett and Sherman, their Holsom Division, we are buying a packer label, which is a special with us. We have bought it for the last two years. Our purchases in '57, about four thousand, in '58 about twelve thousand. It is strictly a promotional item with us.

850 Q. When you say a packer label, you mean their label?

A. Their label.

Q. And a promotional item you mean what?

A. This is what we call ten cents merchandise. It is retailed at ten cents, to sell for ten cents.

Q. What type of product is it?

A. This is an olive.

Q. One olive?

A. No, this is a small bottle of olives.

Q. Lipton Tea Company?

A. Lipton Tea, we are using their advertised brands. Our purchases in 1957 about fifty thousand; in 1958 about ninety thousand; in 1956 it was about thirty-five.

Q. George A. Hormel and Company?

A. George A. Hormel, we are handling their national advertised brands. Our purchases in 1957 about sixty thousand; our purchases in 1958 about one hundred twenty thousand; and in 1956 about forty thousand.

Q. Let me go back to Lipton Tea. I think the last year you stated you said about thirty-five. You mean about thirty-five thousand?

A. Yes, sir, thirty-five thousand.

Q. Bedford Products?

A. Bedford Products, we have purchased as a pri-
851 vate label. Our purchases in 1957 would be about sixty-five hundred. Our purchases in 1958 about twenty-five hundred; 1956, perhaps around five thousand.

Q. Les Pommiers Cannery?

A. No purchases.

Q. Blue Point Company?

A. No purchases.

Q. J. J. Gielow and Sons?

A. No purchases.

Q. Recipe Foods?

A. Recipe Foods, no purchases in '56, '57, or '58.

Q. Some in '59?

A. No, there were some purchases prior to that time under another private label.

Q. Do you have any estimates on the amount and when?

A. Our purchase probably before that time would be about forty-five thousand dollars.

Q. J. L. Read Foods, Inc.?

Mr. Walker: Excuse me, was that figure a total figure or a per year figure?

The Witness: That was a total, total figure.

By Mr. Hays:

Q. For what period?

A. That would be about a two year period.

Q. Which two year period?

852 A. That would be '54 and '55.

Q. J. L. Read Foods?

A. J. L. Read Foods, we had one purchase in 1958. This was a deal purchase that we made on potato salad and we had one other purchase of an advertised brand, Duncan Hines dressing. It was about $700; only in 1958.

Q. Grocery Store Products?

A. Grocery Store Products is an advertised brand. Our purchases in '57 were $2,300; in 1958, about four thousand. I would estimate it about seventeen hundred in 1956.

Q. P. J. Ritter Company?

A. P. J. Ritter Company, we had one purchase in 1959, a promotional tomato juice, approximately $3,000.

Q. Woolson Spice Company?

A. Woolson Spice is private label. Our purchases in 1957 about $3,000; our purchases in 1958, about $2,400, and I believe about $2,000 in 1956.

Q. Joseph De Frates Company?

A. No purchases.

Q. Moore and Company?

A. No purchases.

Q. Rival Packing Company?

A. Rival, we are using their national advertised brand. Our purchases in 1957 were $25,000; our purchases in 1958, thirty-five thousand; and about twenty thousand in 1956.

853 Q. Blue Seal Foods?

A. No purchases.

Q. F. M. Wilson Canning Company?

A. F. M. Wilson we have used as a private label. Our purchases were about twenty-eight hundred in 1957; about twenty-two thousand in 1958; and our purchases would be probably around thirty-five hundred dollars in 1956. This is basically fruits from the West Coast and we would have a fluctuation there because we may be buying from other suppliers.

Q. Alma Canning Company?

A. Alma Canning Company, we use private label and their brand label. Our purchases in 1958 would be between ninety and ninety-five thousand. Our purchases in 1957 about seventy-five thousand; and our purchases in 1956, I would estimate to be about sixty-five thousand.

Q. Jay Freeman and Company?

A. No purchases.

Q. Omega Food?

A. No purchases.

Q. Mayclin Sales Company?
A. No purchases.
Q. McLean Frozen Pies?
A. No purchases.
Q. Gino Corporation?
A. No purchases.
854 Q. Henderson's Portion Pack?
A. No purchases.
Q. National Brands, Inc.?
A. No purchases.
Q. Dixie Lily Milling Company?
A. No purchases.
Q. Nelson Brokerage Company?
A. No purchases.
Q. Elbeck Milling Company?
A. No purchases.
Q. American Frigid Company?
A. No purchases.
Q. Capitol Company?
A. No purchases.
Q. Great China Food Products?
A. Great China Food, would be a private label. Our purchases about $1,200 for each year. This is a product that may be placed with other suppliers.
Q. I don't understand what you mean.
A. It may be—well, we may get and do get this particular product from more than one supplier.
Q. Aurora Frozen Foods?
A. Aurora Frozen Foods is a private label. Our purchases in 1957, $3,500; in '58, our purchases would be about $6,000.
Q. Vevco Foods?
855 A. No purchases.
Q. Terry Foods?

A. Terry Foods, we are using their advertised brand. Our purchases in '57 about eleven thousand. Our purchases in 1958 about $13,500; and I would estimate about ten thousand in 1956.

Q. What kind of products do they make?

A. This is a frozen prepared food. It is a prepared food, frozen, sliced beef, barbecue, turkey. That sort of thing.

Q. Morgan Packing Company?

A. Morgan Packing Company, we have some private label and also some packer, brand label purchases; 1957, about $30,000; 1958, about $34,000.

Q. Midwest Food Packers?

A. Midwest Food Packers is a private label purchase, and about $10,000 each year.

Q. Gibbs and Company?

A. Gibbs and Company, when we did make a purchase it was private label. We had no purchase in 1958. We had about $3,800 in 1957.

Q. Manischewitz Food Products?

A. No purchases.

Q. American Home Foods?

A. American Home Foods is a national advertised label. Our purchases in 1957, about $50,000; in 1958, about one
856 hundred fifteen thousand; and about forty thousand in 1956.

Q. Moore and Company?

A. No purchases.

Q. Beechnut Packing Company?

A. Beechnut Packing Company, we are using their national advertised label. Our purchases, about $10,000 in '56 and '57 and about $12,000 in 1958.

Q. Is that baby foods?

A. That is baby foods.

Q. Gerbers is also baby foods?

A. Gerbers is also baby foods.

Q. Croyden House Foods?

A. No purchases.

Q. Blue Point Division of General Foods Corporation?

A. No purchases.

Q. LaFayette Packing Company?

A. No purchases.

Q. Leigh Food Products?

A. No purchases.

Q. Fred Mushroom Products?

A. No purchases.

Q. Hunt Foods of Ohio or California?

A. Hunt Foods of Ohio, no purchases; and Hunt Foods of California, we are using their tomato sauce. Our purchase in 1957 and '58 would be about $2,000 each year.

857 Q. Manning, Inc?

A. No purchases.

Q. Jacksonville Milling Company?

A. No purchases.

Q. Barra Frozen Products?

A. No purchases.

Q. Tone Bros?

A. No purchases.

Q. Mother's Foods, Inc.?

A. No purchases.

Q. Boullo Food Products?

A. No purchases.

Q. The Hoger Corporation?

A. No purchases.

Q. Wagner Bros?

A. No purchases.

Q. You have indicated that some of these purchases have been purchases of private label products?

A. Yes, sir.

Q. Before the acquisition of your company by Consolidated Foods, did you have your own brand labels?

A. Yes, sir, we have acquisition when — we were affiliated with Topco Associates, and we did use a private label.

Q. What was that brand?

A. That was Food Club.

858 Q. Was that the only one?

A. Food Club and Elna.

Q. After the acquisition, did you continue to sell under those labels?

A. We sold our product out under those labels.

Q. Since the acquisition, have you taken on a different private label?

A. Well, we have, actually, during the time we were using this private label we were also using Monarch merchandise.

Q. You continue to use Monarch brand, now?

A. We have Monarch brand. We started using Monarch brand about 1952.

Q. Did you continue to use Monarch brand to the same extent since the acquisition?

A. Yes, sir.

Q. You did not expand it?

A. Well, I think there are, perhaps, items that we may have had under the Food Club label that we would carry under Monarch label.

Q. What were those items?

A. Basically there would be some canned food items.

Q. You are familiar with Chef Boy-Ar-Dee brand, are you not?

A. Yes, sir.

Q. That is a brand of American Home Foods?

859 A. Yes, sir.

Q. That is applied to a variety of products, is it not?

A. Yes, sir.

Q. It is an advertised brand?

A. It is an advertised product.

Q. You are familiar with Hunt Foods, are you not?

A. Yes, sir.

Q. That is a brand also, is it not?

A. That is a brand, advertised brand.

Q. And it is advertised?

A. Yes, sir.

Q. And it is applied to a variety of products?

A. Yes, sir.

Q. You purchase from Hunt only tomato catsup?

A. Tomato sauce is the item we have purchased, and I believe we have also had a purchase of their Snider catsup which is also a Hunt product.

Q. There are a number of Hunt brand products that you do not carry. Is that correct?

A. There are a number that we do not carry.

Q. Insofar as the Chef Boy-Ar-Dee brand is concerned, that is advertised, is it not?

A. It is advertised.

Q. It is applied to a variety of products?

A. Yes, it is.

860 Q. Do you purchase all of the variety of products which have the Chef Boy-Ar-Dee brand on them?

A. No, sir.

Q. Which products do you purchase?

A. Well, it is basically the Italian foods, spaghetti and meat balls, we have had this increase in interest in the pizza in the last year. Basically they are the Italian foods they would manufacture and pack.

Q. What other type of foods are under the Chef Boy-Ar-Dee brand that are not Italian foods that you do not carry?

A. That is — well, basically, they are basically in the Italian food business under Chef Boy-Ar-Dee.

Q. But that brand is applied to other products that you do not carry. Is that correct?

A. That may be. I am not that familiar with other products that they may pack.

Mr. Hays: That is all.

Cross Examination

By Mr. Walker:

Q. Mr. Whitely, laying aside the private label products, basically what determines whether you will or will not carry a nonprivate label products on the shelves in the Piggly Wiggly stores?

A. The purchase of a nonprivate label product will depend on consumer demand.

861 Q. Will you explain, please. Why is it you only carry a few of the Hunt Food Products and a greater number of the Chef Boy-Ar-Dee products, although both are advertised and more are available in the case of Hunt Foods?

A. Well, we are constantly looking for a source of supply that will give us the quality that we want, naturally at an attractive price.

Mr. Hays: Do all nationally advertised products, those you are familiar with, create a consumer demand in the areas where the Piggly Wiggly stores are located?

The Witness: Not every national advertised brand. There may be some areas where it has absolutely no effect.

By Mr. Walker:

Q. Can you give us any example of that?

A. I think a real good example of that might be the case of Beechnut baby food, which is in our Iowa area there is no particular acceptance of Beechnut. We discontinued the item in our Rockford operation in early '56 and the only place, based on the figures that I gave Mr. Hays were we are using it is in the Chicago area where the demand requires its stocking.

Q. So it is not, if I understand your testimony, Mr. Whitely, national advertising, that decides whether you will or will not carry a product?

A. No.

Q. It is whether the consumer responds to that ad-
862 vertising and expresses a demand for the product that you must fill?

A. That is correct.

Q. Do you think of any example where you did not carry a nationally advertised or locally advertised product where there was a demand and you were forced to carry it as a result?

A. We did have a situation with a national advertised shortening product, which we initially rejected and we were able to survive with it only a matter of a couple of months. This happened to be Fluffo shortening. When it came on the market we decided we would not put it in, but the public demand made it necessary that we put it in.

Q. Will you please explain the relationship—first, I would like to have you explain the composition of Piggly Wiggly Midwest, Mr. Whitely. The corporate structure.

A. Piggly Wiggly Midwest Company, Inc. is a wholly owned subsidiary of Consolidated Foods Corporation. Piggly Wiggly Midwest Company, Inc., has several subsidiaries, Marshall Piggly Wiggly, Inc. which is Marshall, Iowa, and Piggly Wiggly Madison Corporation, which is a Wisconsin corporation. Currently we operate a warehousing facility in Iowa and we have one in Rockford.

Q. What is the division of purchasing authority within the different units, Mr. Whitely?

A. Our purchasing actually is on an independent basis.
There are many items that are carried in our Iowa
863 warehouse which we do not carry in Rockford and vice versa. It is a matter of the demand for the product.

Q. Would you describe the changes in number of stores operated by Piggly Wiggly over the years please, Mr. Whitely?

A. Well, over the years, by way of an example, the number of stores operated by Piggly Wiggly Midwest Company, in 1950, we had 20 operating stores. In 1955 we had 30 operating stores. In 1958 we had 47 operating stores.

Q. What in your opinion accounts for the increase in your purchases of products from American Home Foods?

A. Our increase in purchases from American Home Foods is advertise—tied to our increase in number of stores.

Q. Is consumer demand a factor there, sir?

A. Consumer demand is the factor.

Q. But you purchase—by "you" I mean, of course, Piggly Wiggly, did you purchase American Home Foods Products prior to 1956?

A. Yes, sir, we did.

Q. At about what level would that be as compared to 1956?

A. It would show a gradual increase through the years as shown by our increase in number of stores.

Q. You testified, I believe, that a portion of your purchases from Armour and Company were fresh meats. About what percentage of your total purchases are fresh meats?

A. Our fresh meat purchases would be in excess of 60 per cent.

864 Q. Did you purchase these products from Armour prior to 1956?

A. Yes, sir, we did.

Q. What would be the amount of those purchases in the years prior to 1956 as it compared to after?

A. Actually our purchases through the years show an increase.

Q. Did you carry Monarch Mushroom sauce purchases from Aurora Frozen Foods prior to 1956?

A. Prior to 1956, we would have handled the mushroom sauce but it would have been purchased from the Monarch house.

Q. Did you carry Monarch jellies prior to 1956?

A. Yes, sir, we did. That would have been purchased from the Monarch house.

Q. Did you purchase Gerbers products prior to 1956?

A. Yes, sir, we did.

Q. What products did you purchase from Gerber?

A. Gerber's are strictly the baby food line.

Q. Those products are advertised?

A. Those products are nationally advertised.

Q. At about what volume did you purchase Gerbers products prior to 1956?

A. We show an increase in purchases through the years.

Q. What products did you purchase from Grocery Stores Products?

865 A. We are buying two items, cream of rice and Kitchen Bouquet.

Q. Those are advertised products?

A. Those are advertised products.

Q. Did you purchase those products prior to 1956?

A. They have been purchased prior to 1956.

Q. In about what volume, please?

A. The volume has held constant, because in the case of those two products, actually the demand has been falling and we do have increased stores, so it is at about a level.

Q. Have you purchased those products from a broker?

A. We purchase them through a broker.

Q. What products do you purchase from George A. Hormel?

A. George A. Hormel, we are purchasing Spam, Dinty

Moore beef stew and Mary Kitchen package. On occasion we have had some fresh meat or a bacon purchase.

Q. Were those products you mentioned by name advertised locally?

A. They are all advertised locally, and nationally.

Q. Did Piggly Wiggly purchase those products prior to 1956 and at about what volume?

A. They purchased prior to 1956 and we show an increase in purchases through the years.

* * *

866 By Mr. Walker:

Q. Mr. Whitely, you mentioned a purchase of olives from Jewett and Sherman in 1957, 1958, I believe, and you referred to this as a ten cents item. Why did you take this item on?

A. We took this item on because a very important part of our merchandising program is our ten cents merchandise, which has consumer acceptance.

Q. It is advertised at ten cents?

A. Advertised at ten cents.

Q. Did Piggly Wiggly purchase from Liptons prior to 1956 and in about what volume?

A. It purchased prior to '56 and our purchases show a gradual increase.

Q. What are the products you purchase from Liptons?

A. From Liptons we are purchasing various soups and tea.

Q. Have you purchased —

A. And there is a Wishbone dressing.

Q. Those are advertised products?

A. Those are all advertised products.

Q. Did Piggly Wiggly purchase from Oscar Mayer prior to 1956 and in about what volume?

A. We purchased prior to 1956 and we show an
867 increase in the canned meats. There would be a fluctuation in fresh meat based on availability of the merchandise.

Q. Are those canned meats locally advertised?

A. Those canned meats are locally and nationally advertised.

Q. You testified to a single purchase, I believe, from J. L. Read Company. What was the products involved?

A. Well, J. L. Read, we purchased special, a deal pack of potato salad which they brokered.

Q. You described on your direct examination the amount of the purchase and type. Why did you make the purchase, in your opinion?

A. Our purchase was made to provide an attractive — it was an attractive price deal which we could use in our merchandising program.

Q. Did you purchase that through a broker?

A. We purchased that through the broker.

Q. Did Piggly Wiggly purchase Rival products prior to 1956 and in what volume?

A. Rival was purchased before '56 and we show a gradual increase because of the promotional activity of the company.

Q. Did you purchase Barbecue sauce from Wass Food Products—strike that question.

Did you purchase Monarch barbecue sauce prior to 1956?

A. We would have purchased the barbecue sauce 868 from a Monarch house.

Q. Did Piggly Wiggly, to your knowledge, use F. M. Wilson Canning Company as a private label supplier prior to 1956?

A. Yes, sir, we did. We used it under our Food Club label.

Q. What in your opinion accounts for the large increase in purchases from F. M. Wilson Company in 1958 over 1957 and 1956, sir?

A. Well, our increase in that particular year would be due to the placement because the quality and the price met our specifications.

Q. You testified, I believe, that you bought black pepper from the Woolson Spice Company?

A. That is right. We bought black pepper from Woolson Spice Company, but actually we have discontinued the buying of the product because we have not had the consumer acceptance of this particular product.

Q. Aren't there a complete line of Monarch spices that are packed by Woolson Spice Company?

A. Woolson does pack a complete line of spices, but currently we are using a national advertised line, Durkees, which does have consumer acceptance.

Q. About what volume do you buy from Durkee's that you could buy from Woolsons?

A. Our purchases in 1958, I would estimate to be about $75,000.

869 Q. Why do you buy Durkee's?

A. We buy Durkee's because our customer wants Durkee.

Q. Did I understand you to say you tried to use the Woolson, the Monarch spices on your shelves?

A. We did try it on our shelves.

Q. What happened?

A. It warmed the shelf.

Q. Do you purchase products from Wyler and Company through a broker?

A. Purchases of Wyler are through a broker.

Q. Did Piggly Wiggly purchase those prior to 1956 and in about what volume?

A. Wyler, we purchased before 1956. Our purchases were constant.

Q. What products were those, sir?

A. We purchased their boullion cubes and then a year ago they introduced their lemonade mix which had a wide national advertising campaign and created considerable demand for that product.

Q. In Piggly Wiggly as to your products that you carry in your store, do you often duplicate the private label products with advertised brands?

A. Yes, sir, we do. We can refer to the Monarch label as our private label, but in practice we have actually duplicated most of that line in canned fruits and vegetables
870 with the Del Monte line which is nationally advertised and which is the customer's wants.

Q. Why do you have this duplication?

A. We have this duplication because if we are not providing the product for the customer they will go elsewhere to buy it.

Q. Could you, in your opinion, just carry the private label products and not carry these advertised brands products.

A. No, sir. Our customers would be going to our competition.

Q. In a number of instances as to these companies you have been asked about, Mr. Whitely, you have said that there were gradual increases in your purchases of those products pre-1956 and the figures show some increases after 1956. As a general matter what is the explanation for those increases?

A. As a general matter our purchases show an increase because we are increasing the number of outlets to sell the various products.

Q. About what percentage of Piggly Wiggly buying is done thru the Chicago or West Coast buying office taken together?

A. Together, between five and six per cent.

Q. What was the approximate total dollar volume of Piggly Wiggly's purchases in 1955?

A. Our purchases in 1955 would be about $28,000,000.

Q. What would be your estimate in 1958?

A. About $48,000,000.

Q. There are a couple more companies here I am
871 afraid I overlooked. Did Piggly Wiggly purchase from Alma Canning Company prior to 1956?

A. It did purchase prior to '56, and it was a combination of brand label and also a few items that we carried under our Food Club label.

Q. How would the volume compare with the post '56 purchases?

A. Actually it would fluctuate.

Q. Did Piggly Wiggly purchase from Great China Food Products prior to 1956?

A. No.

Q. We have covered so many companies here that I would like to ask you whether you described on direct examination, if you did I do not want to ask you to repeat it, why you carried, and I believe stopped carrying the Beechnut products?

A. I don't believe we went into that on direct examination.

Q. You testified you did carry the Beechnut products. What were those products?

A. The Beechnut products were all baby foods.

Q. As I understand it, your purchases decreased.

A. Our purchases decreased with Beechnut to the point where we discontinued the line in our Rockford warehouse.

Q. Why did thy decrease?

A. They decreased because we did not have customer acceptance in our operating area at that time.

Mr. Walker: No further questions.

872 *Redirect Examination*

By Mr. Hays:

Q. I have a few questions, Mr. Whitely. With reference to the private label, I mean formerly your private label and now Consolidated Foods private label, isn't it true there has

been a trend insofar as private label generally is concerned, there are more private labels on the retail shelves than there were before? Hasn't that trend been increasing? Private label, in other words, has extended to more products. Is that not true?

A. Well, I would say in our own operation that for every private label we are carrying a national advertised brand because the customer still wants a national brand of merchandise.

Q. Yes, but that I don't believe exactly answers my question. Over the years, say, since 1951, hasn't the use of private label increased in the number of products to which it has been applied?

Mr. Walker: Insofar as Piggly Wiggly stores are concerned?

Mr. Hays: Insofar as Piggly Wiggly is concerned, yes, sir.

The Witness: I would say insofar as Piggly Wiggly is concerned, that we began adding private label under our Food Club line.

By Mr. Hays:

873 Q. When was that, sir?

A. That was about 1951; '50 or '51.

Q. Since that time hasn't private label foods been added, more foods and various different categories since you began?

A. I honestly don't believe it is a significant increase.

Q. It increased from nothing to something when you took on the Food Club line, did it not?

A. Yes, sir, that is right. Well, actually, before that I might add that before that, there were certainly Piggly Wiggly brands that we would have carried, so in a sense from our very beginning we could very well have had some private label merchandise from our very beginning.

Q. I am asking you the extent of the increase since 1951.

I take it that when you took on the Food Club line, you increased your private label business?

A. We did.

Q. Since that time hasn't there been more of an increase?

A. There would have been an increase, yes.

Q. Isn't that trend toward private label, isn't that characteristic of the retail food industry?

Mr. Walker: I want to object. I am sorry, I did not mean to interrupt you. Were you through?

By Mr. Hays:

Q. Isn't that trend characteristic of the retail food industry; trend toward private label?

874 Mr. Walker: Objection, Your Honor, putting words in the witness' mouth. The witness has not testified that there was a trend toward private label.

Mr. Hays: I will rephrase the question.

Hearing Examiner Kolb: Very well.

By Mr. Hays:

Q. Hasn't the type of increase that you have testified to with reference to private label also been apparent in the retail food industry as a whole?

A. I think that may be true.

Q. I believe you stated where you have similar products, that you have in some instances have a private label product that is your own product, and a branded or advertised label. Is that correct?

A. Yes, sir.

Q. Isn't it generally true that the private label product sells for less than the advertised product?

A. There may be a differential. There may be a differential. I can't think of an item offhand.

Q. Let us take the Del Monte line. I believe you referred to that as a nationally advertised line.

A. Yes, sir.

Q. Did you refer to the fact that you also at the same time had Del Monte line on your shelves and you had the same product in private label?

875 A. Yes, we have had the same products in private label, yes, sir.

Q. At those times didn't the private label product sell for less than the Del Monte line?

A. The private label would sell less in a normal merchandising program.

Q. Isn't it true that within your stores—strike that. Is it not true that insofar as advertised products are concerned, there are a number of advertised products that you do not carry on your shelves. Is that correct?

A. There may be a number of advertised products that we do not carry. An example of that might be, we discussed Hunt a little bit ago. Now, Hunt is national advertised and Del Monte is national advertised. Del Monte has consumer acceptance in our area. Hunt line of fruits, for example, does not.

Q. When you say that it does not, let's put it this way: There must be some consumer acceptance in your area?

A. Well, by the same token— may I add this:

Q. Just answer if that is true. There is some consumer acceptance, is there not?

Mr. Walker: In what area?

Mr. Hays: His area. If he answered it in the first instance, I would not have had to rephrase it, Mr. Walker.

By Mr. Hays:

876 Q. There is some consumer acceptance for Hunt foods in your area. Is that right?

A. Hunt is nationally advertised and we would move some product off shelf if we had it.

Q. That is correct. In other words, you said there was

no consumer demand you meant it was less than other brands?

A. Less than other national brands.

Q. Is it not true also insofar as the advertised brands are concerned, that the demand has fluctuated in your stores from time to time and the consumer acceptance has fluctuated from time to time. Is that not true?

A. In national brands?

Q. Yes.

A. Yes, sir.

Q. Isn't that consumer acceptance related to the intensity of the advertising in to a large degree?

A. The national advertising?

Q. Yes, sir.

A. Yes, sir.

Q. In other words, when a program is put on there is more consumer acceptance in times when no advertising program is put on?

A. Yes, sir.

Q. What attempts do you make to keep up with the degree of consumer acceptance as to the products in your stores?

877 A. I think our own buying committee would be sensitive to published figures. They are also very sensitive to customer requests for products that we may not have. They will be sensitive to advertising programs.

Q. Let me put it this way: Isn't it true that since 1951 in your stores, that from time to time you have added nationally advertised products and brands that you did not have. Is that true?

A. Yes, sir.

Q. Isn't it true that you have removed, ceased to buy nationally advertised products when the consumer demand diminished?

A. Yes, sir.

Q. When you refer to purchasing from brokers, you refer to brokers of the seller. Is that correct?

A. Well, the broker's representing a given supplier, yes, sir.

Q. They did not represent you in those transactions?

A. No, sir.

Q. Insofar as canned fruit is concerned, you carry the Del Monte line?

A. Yes, sir.

Q. You have your private label also?

A. Yes, sir.

Q. Do you carry any other brands of canned fruits?

878 A. Yes, sir, there would be other lines that would be under packer label that may have been on special purchases.

Q. How many brands do you carry at a given time of canned fruit in any one store?

A. How many different brands?

Q. Yes. You, of course, carry the Del Monte in the stores?

A. That is correct.

Q. And you carry your own brands. Is that correct?

A. We carry the Monarch brand, yes, sir. We could carry, we would have some Dole. We could have—well, there are a number of other packer labels, Keefer is one example I can think of which would be the actual packer's label.

Q. You would, would you not, limit the number of brands that you carry from the choice that is open to you. How many different brands does a store normally carry of, say, canned pineapples?

A. Oh, I suppose normally the average super market would carry three lines of canned pineapples.

Q. How many brands of canned pineapple are available to you to purchase, if you wanted to?

A. Available for us to purchase? Well, I would estimate about five that could be considered as major packers.

Q. There are a number of minor ones, are there not?

A. There might be some minor ones. There might be a packing of Mexican pineapples under a label which at
879 a given time and for a special purchase we would buy, have purchased.

Q. Is it not generally true that because of the limitations on your shelf space you have to limit the number of branded products that you carry in a similar product category?

A. Well, I am sure that we have all run into the problem of shelf extenders. Currently our problem is one of trying to fill up because our stores are getting larger all the time. But generally speaking, yes, in every store there is going to be a limiting factor. In other words, some of our stores are 20,000 square feet that will be able to handle a broader variety of product than a 10,000 square foot store, yes, sir.

Q. You are faced with that limitation?

A. We are faced with that limitation depending upon the size of the given store what we can present to the customer.

Q. Mr. Hays: No further questions.

Recross Examination

By Mr. Walker:

Q. Over the years, Mr. Whitely, it is a fact, is it not, that there has been in the retail grocery business a trend away from a small service store to the super market that is self-service. Is that not right?

A. That is right, sir.

Q. That trend has been very pronounced?

A. Very pronounced.

880 Q. Is it not also true, Mr. Whitely, that in the case of the old service store that private label products were used quite frequently?

A. They were used.

Q. Is it not also true, Mr. Whitely, that as the chain stores, these self-service stores have come into prominance, that now the shopper to a greater extent is free to look at the products on the shelf and choose the product by looking at them that he or she wants?

A. That is right.

Q. Was this true as to the old service stores?

A. Well, the old service type grocery store while you were able to look over the counter and look up at the shelf, you did not have the availability of selection.

Q. So that the person running the store had a greater opportunity to use personal salesmanship on the products that he was selling?

A. Yes, sir.

Q. Against that background, Mr. Whitely, and considering also the factors that Mr. Hays asked you about on direct examination, I am going to ask you again to think about your opinion as to the trend of sales of private label products as compared to nationally advertised products over the years, over all.

A. Over all. Well, over all in our business actually we would have had a greater increase in nationally adver-

881 tised products than we would private label.

Q. And that is true even though you may carry more private label types of products now than you did in, say, 1950?

A. Yes, sir.

Q. Hasn't the Monarch and Richelieu products over the years been known as premium quality products, Mr. Whitely?

A. Monarch before 1956 as far as Piggly Wiggly was concerned, Monarch in the sense was a national advertised label and it did have the acceptance, very strong acceptance in our operating area.

Q. Am I right or wrong in saying that I had thought it was a — it was known as premium quality?

A. It was known as a premium quality. It was the primary label in what we might call the good small store. Well, just actually, good small service store it was a prime label.

Q. In many instances the Monarch product sold for a higher product [sic] over the years than the advertised products?

A. It did over the years, yes, sir.

Q. Mr. Whitely, if a significant number of housewives came into your store and asked for Hunt fruit products, would you or would you not carry them?

A. If we had a significant number come in, we would carry Hunt foods.

Q. Rather than be general about this area and I think we have too much generality in the record, I am going
882 to be very specific about these products here and I am going to take them one by one and ask you whether in your opinion in view of the consumer demand you could eliminate them from your stores. The Chef Boy-Ar-Dee products of American Home Foods?

A. No, sir.

Q. The advertised products of Armour and Company?

A. No, sir.

Q. The baby foods products of Gerbers?

A. No, sir.

Q. The advertised products of Grocery Store Products? Kitchen Bouquet and Cream of Rice?

A. The two products we are handling, I think, we could eliminate.

Q. The canned meats of George A. Hormel and Company?

A. No, I think we would have to keep those.

Q. The branded products of the Thomas J. Lipton and Company?

A. We would have to keep those.

Q. The pet food products of the Rival Packing Company?

A. We would have to keep the dog food of Rival.

Q. Were the Topco private label products competitively priced with Monarch?

A. Yes, sir, they were.

Mr. Walker: No further questions.

Mr. Hays: Just a few more questions, Your Honor, with reference to that brought out by Mr. Walker.

883 *Further Redirect Examination*

By Mr. Hays:

Q. I notice when Mr. Walker asked you whether you could eliminate the Hormel products you hesitated considerably before you made your answer. Was there some doubt in your mind whether you could eliminate Hormel?

A. I was thinking of our fresh meat purchases in that particular instance, but with Hormel we have Spam which is the big item.

Q. Do you mean you could eliminate the fresh meat purchases from Hormel?

A. Well, we have such a small amount of purchases that we could. Actually our fresh meat purchases are basically promotional.

Q. When you say promotional, do you mean they sell at a low price to get the customer in the store? Is that what you mean by promotional?

A. In other words, we are able to get a — let's say we are able to get a good buy, and bacon is basically the known canned food item we could get from Hormel.

Q. So you could sell that at a price that would attract the customer?

A. Attract the customer.

Q. I believe you stated in one instance that Monarch was a premium product?

884 A. Yes, sir.

Q. You mean that was a higher priced product?

A. Actually it was a top label. It compared with the number one quality label of any other manufacturer.

Q. In another instance, you said Food Club was competitive with Monarch. What do you mean by that?

A. When I say it was competitive, I meant in all probability we would be selling it in the same price range.

Q. Is it not true that the Food Club when you sold it, was sold for less than comparable products?

A. There were instances where it might well have been sold at less than another label.

Q. With reference to the Monarch brands, in recent years hasn't the Monarch brand been sold increasingly more at a lower price than comparable items?

A. Been sold at a lower price?

Q. Yes.

A. You are speaking of the complete line of Monarch, are you?

Q. Yes, sir.

A. Been sold at a lower price progressively lower price do you mean?

Q. Yes.

A. No, sir.

Q. There have been instances of where the Monarch
885 brand has been sold at a lower price than comparable goods?

A. It would have been sold at a lower price if it were included in a sales plan for a given period, yes, sir. In

other words, if I may amplify that. In our business, as you probably know every chain operation has a sale every week. And, of course, we will vary the number of items that will fit into that program and we can have a situation where the Del Monte line would be used for a sale program and conceivably at that time would sell lower than a Monarch item.

Q. But that would only be in a special instance?

A. Generally whatever we are including in a sales program would determine what it was sold for at a given time.

Q. Generally, aren't your own brand included more in a sales program than nationally advertised brands?

A. Actually our program going forward, we are devoting, I would say, similar emphasis to national brands.

Q. Similar emphasis?

A. Yes. In other words, we are not loading a sales program with private labels. We will also have our national advertised brands in a given promotion.

Q. What other brands do you have besides Monarch that are private label. That is, label of Consolidated Foods or the label of Piggly Wiggly?

A. The other private label one I can think of would be Good Cheer Coffee. You can grind that in the store.
886 Most of the others would be packer labels. While we would make direct purchases, technically it would not belong to us or be part of the family. Right at the moment I can't pull any others out that would be our own label, because basically that is Monarch, Monarch and Kenny, if you are getting into labels, we have the Kenny label which would be private label.

Q. You have the Kenny products?

A. Kenny label.

Q. Are those products similar to products with a Monarch label?

A. The difference basically would be in the area of how well they would measure in quality control up to a given set of standards.

Q. In other words, you do have some similar products with both the Kenny and Monarch labels?

A. Yes, because again you are having to sell a product as represented and Monarch would be the first quality line of our private label and perhaps a Kenny line would not meet the standard that a certain label would require, just as any national advertised brand, Del Monte has its second line of fruit and third line of fruit.

Q. In other words, your Kenny line would sell for cheaper price?

A. It would.

Q. Than Monarch?

887 A. Yes, it would, because the quality is not as good.

Q. Is there anything on that can to indicate a difference in quality when the Kenny line and the Monarch line?

A. I don't know. I am not that close to the purchasing to be able to answer that question.

Q. When it is on the shelves in your stores, is there anything on that item to indicate it is of lesser quality than the Monarch brand?

A. That it didn't measure up to the Monarch label?

Q. Yes.

A. I don't believe so.

Q. Consequently, since, as Mr. Walker brought out, there has been in recent years a trend where the customer faced directly with the product. Is that correct?

A. Yes.

Q. So far as the customer is concerned, the only apparent difference between the Monarch brand and the Kenny brand from looking at them on the shelf, would be the lower price of the Kenny brand?

A. The lower price.

Mr. Hays: That is all.

Further Recross Examination

By Mr. Walker:

Q. Housewives are pretty generally familiar with the difference in quality between these products?

888 A. I think our customers generally are buying on price.

Q. By price you mean what in relation to quality?

A. Well, actually, under our present system, I think everybody is on a budget basis and they have so many dollars to spend and they are going to spread it just as far as they possibly can. That actually is part of the reason for our, this center line of merchandise I mentioned before. It has consumer acceptance.

Q. So far as brands are concerned, don't your customers generally know that Monarch is a better quality brand than Kenny?

A. Yes, sir.

Mr. Walker: That is all.

Further Redirect Examination (Continued)

By Mr. Hays:

Q. What is the basis for that opinion that your customers know that Monarch is generally a higher quality than Kenny brands?

Mr. Walker: Objection, Your Honor, this witness can not possibly testify for the basis of opinion held by somebody else. He can testify to the manifestations of that opinion but he can not possibly testify why another person holds that opinion.

Mr. Hays: I asked him what the basis for his statement was.

889 Mr. Walker: I am sorry, I thought you meant what was the basis of that other person's opinion. Excuse me, I will withdraw the objection.

The Witness: For my opinion?

By Mr. Hays:

Q. Yes.

A. Of why one would be better than the other?

Q. Why the housewives know one is a higher quality than the other.

A. I think that is probably because through the years it has been considered a top label, Monarch is a top label quality merchandise.

Q. Do you make any attempts to educate your customers between the difference in quality between the Kenny label and Monarch label?

A. No.

Mr. Hays: That is all.

Further Recross Examination (Continued)

By Mr. Walker:

Q. Monarch has spent a considerable amount of money doing this over the years, have they not?

A. Yes, as a matter of fact it has national advertising.

* * *

891 JOHN R. WATSON was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr Hays:

Q. Will you state your name and address and place of business, sir.

A. John R. Watson, 184 Baltimore Street, Cumberland.

Q. Where are you employed, sir?

A. By Monarch Finer Foods, Manager of the Cumberland branch.

Q. Do you hold a comparable position to Mr. Heitger who was the Monarch Finer Foods Manager at the Columbus branch?

A. Yes, sir.

Q. And a comparable position to Mr. Brumbach who was the Manager of the Monarch Finer Foods, Roanoke branch?

A. Yes, sir.

Q. How long have you held your position?

A. Since 1941.

Q. Who is your immediate superior to whom you report?

A. Mr. S. M. Kennedy, Chicago.

Q. Describe the operations of the Cumberland 892 branch of the Monarch Finer Foods?

A. We are wholesale grocery, distributing food products and other items to retail stores, grocery stores, institutions.

Q. Do you make some purchases for your branch?

A. That is correct.

Q. Purchases of food products?

A. That is right.

Q. Are you familiar with the suppliers of those products?

A. Yes, sir.

Q. You have heard me ask questions of other witnesses with reference to certain suppliers?

A. Yes, sir.

Q. Will you state when I name the company whether or not you have made purchases from this company during the period 1951 to the present, and if so, whether the purchases were private label or branded products, and the annual amount of those products. Will you do that, sir?

A. Yes, sir.

Q. The first company is Wyler and Company?

A. Yes, sir, we made purchases from Wyler and Company. If I recall right, we made one purchase from them. That was in 1958 to the amount of $155 and that was under Wyler's label.

Q. Custom Foods?

A. No.

Q. Wass Food Products?

893 A. Yes, I think it was purchase from Wass Foods. Two purchases, in 1957 it was $100 and in 1958 it was $100. That was private label.

Q. Armour and Company?

A. In 1951 we purchased approximately $7,000; 1952, blank; 1953, $1,000; 1954, one thousand, approximately; 1955 and '56, approximately two to three thousand; in 1957 approximately forty thousand. And from five to eight hundred of that, I suppose, was private label. In 1958 we purchased $56,000.

Q. When you said blank for one year, I believe 1952, did that indicate no purchases?

A. No purchases. Yes, sir.

Q. Were the remainder of the purchases advertised brands?

A. All Armour items with the exception of one soap product which we buy from them, Easy Wash. That would take care of that five hundred to eight hundred dollar in private label.

Q. Michigan Mushroom Company?

A. No, sir.

Q. Indiana Mushroom Corporation?

A. No, sir.

Q. Gerber Baby Foods?

A. Yes, we bought from Gerber one year, I think. 1955, we purchased approximately $1,800.

Q. You did not purchase any other years?

A. No, sir, did not.

894 Q. During the period 1951 to the present, did you carry Gerber baby food?

A. Just the one year.

Q. You did not carry them any other year?

A. No, sir.

Q. During the other years did you also sell your food products and food line to grocery stores?

A. Yes, sir.

Q. To what extent?

A. To practically the same extent previous to 1955 and after 1955.

Q. What was that? Is most of your business institutional or—

A. No, sir, most of it is retail.

Q. Lake Odessa Canning Company?

A. No, sir.

Q. Oscar Mayer and Company?

A: Yes, we bought some from Oscar Mayer. In the year 1956 we bought between five hundred and thousand dollars worth; in '57, about the same amount. The other years, nothing.

Q. During those other years, did your Division, your branch rather carry Oscar Mayer products?

A. No, sir, not the year we did not purchase them we did not carry them.

Q. Milwaukee Spice Mills?

A. No, sir.

895 Q. Jewett and Sherman?

A. Well, we know them as Holsom. In 1951 we bought approximately $3,000 from Holsom; the same in 1952; 1953, about five thousand; '54 from three to five thousand; '55, three to five thousand; 1956, six thousand; and about the same in '57 and '58. That was private label.

Q. Lipton Tea Company?

A. In 1951 we bought approximately a thousand dollars; same in '52 and '53, '54; in 1955, our purchases were between three to four thousand, same in 1956 and 1957; in 1958, we bought approximately eight thousand five hundred.

Q. George A. Hormel and Company?

A. In '51 and '52 in the neighborhood of $2,000.

Q. For each year?

A. Yes, sir. '53 and '54 approximately $900; in '55 between five and seven thousand dollars; in '56 and '57, same figures and '58.

Q. Private label?

A. No, that would be packer's label.

Q. Bedford Products?

A. I think we made one purchase from Bedford Products. In 1958 we made a purchase from Bedford Products approximately $1,000.

• • •

896 By Mr. Hays:

Q. Les Pommiers Cannery?

A. No, sir.

Q. Blue Point Company?

A. No, sir.

Q. J. J. Gielow and Sons?

A. Yes. In 1956 we bought approximately $1,500 from Gielow and Sons and that was private label.

Q. Recipe Foods?

A. Recipe Foods is practically 100 per cent private label. 1951 about $10,000; in '52, blank; '53, four thousand; 1954, blank; 1955, '56, '57, and '58, approximately five and six thousand dollars.

Q. In each of those years?

A. Yes, sir.

Q. When you said blank for 1952 and 1954, did that mean no purchases?

A. No purchases, yes, sir.

Mr. Walker: Would you say that please hereafter so it will be clear for the record, no purchases instead of blank?

897 By Mr. Hays:

Q. J. L. Read Foods?

A. No purchases.

Q. Grocery Store Products?

A. Yes, we purchased from Grocery Store Products. This would be their packer's label merchandise. 1951 about $200; '52, about $200; in '53, about two hundred; '54, '55, '56, '57, and '58, between two and three hundred dollars.

Q. During each of those years?

A. Yes, sir.

Q. P. J. Ritter Company?

A. Yes, we purchased from Ritter. This is partially private label and partially packer's label. In 1952, approximately $2,000; 1952, no purchases; 1953, about $3,000; 1954, no purchases; 1955, around $2,000; 1956, no purchases; 1957, about two thousand; and 1958, approximately three thousand.

Q. Woolson Spice Company?

A. No purchases until 1956. From two to three thousand in 1956; from two to three thousand in 1957; from two to three thousand in 1958.

Q. Joseph De Frates Company?

A. No, sir. No purchases.

Q. Moore and Company?

A. No purchases.

898 Q. Rival Packing Company?

A. Yes, sir. 1951, $900; 1952, no purchases; 1953, $900; 1954, about $900; 1955, about $900; in 1956, about one thousand; 1957, about one thousand; 1958, two thousand five hundred.

Q. Is that private label or branded products?

A. That would be packer's label.
Q. Blue Seal Foods?
A. No purchases.
Q. F. M. Wilson Canning Company?
A. Yes. No purchases in '51 or 1952, and about $2,000 in 1953; no purchases in 1954; $300 in 1955; 1956, about $1,000; 1957, about $1,000; 1958, about a thousand.
Q. Is that private label or branded?
A. That is private label.
Q. Alma Canning Company?
A. No purchases.
Q. Jay Freeman and Company?
A. No purchases.
Q. Omega Food Products?
A. No purchases.
Q. Mayclin Sales?
A. No purchases.
Q. McLean Frozen Pies?
A. No purchases.
Q. Gino Corporation?
899 A. No purchases.
Q. Henderson's Portion Pack?
A. No purchases.
Q. National Brands?
A. No purchases.
Q. Dixie Lily Milling Company?
A. No purchases.
Q. Nelson Brokerage Company?
A. No purchases.
Q. Elbeck Milling Company?
A. No purchases.
Q. American Frigid Company?
A. No purchases.
Q. Capitol Foods Company?
A. No purchases.

Q. Great China Food Products?

A. No purchases.

Q. Aurora Frozen Foods?

A. No purchases.

Q. Vevco Foods?

A. No purchases.

Q. Terry Foods?

A. No purchases.

Q. Morgan Packing Company?

A. Yes, we purchase from Morgan. I would say we 900 average around, since 1951, five to seven thousand dollars about each year.

Q. Is that a private label or branded products?

A. That is some of each.

Q. Midwest Food Packers?

A. No purchases.

Q. Gibbs and Company?

A. We purchased from Gibbs in '51 to '55 or '56, approximately five hundred to a thousand dollars a year.

Q. Private label or branded products?

A. That would be packer's label.

Q. Manischewitz Food Products?

A. No purchases.

Q. American Home Foods?

A. Yes, we purchase from American Home Foods. 1951, around two thousand; 1952, about two thousand; 1953, in the neighborhood of three thousand; 1954, neighborhood of six thousand; '55, neighborhood of six thousand; 1956, the neighborhood of six thousand; 1957, approximately ten thousand; 1958, approximately thirteen thousand.

Q. Private label or branded products?

A. That is all packer's label.

Q. Beechnut Packing Company?

A. No purchases.

Q. Croyden House Foods?

901 A. No purchases.

Q. Blue Point Division of General Foods Corporation?

A. No purchases.

Q. LaFayette Packing Company?

A. No purchases.

Q. Leigh Food Products?

A. No purchases.

Q. Fred Mushroom Products?

A. No purchases.

Q. Hunt Foods of Ohio or California?

A. Hunt Foods of California we have purchased from. Neighborhood of two to three thousand dollars a year; years 1951, '52, 1953, '54, '55, '56, and '57, and '58.

Q. Did I understand you to say between two and three thousand dollars?

A. Yes, sir.

Q. For each of those years?

A. Yes, sir.

Q. Is that private label or branded?

A. That is packer's label.

Q. Manning, Inc.?

A. Where is this Manning?

Q. San Francisco?

A. No purchases.

Q. Jacksonville Milling Company?

902 A. No purchases.

Q. Barra Frozen Products?

A. No purchases.

Q. Tone Bros?

A. No purchases.

Q. Mother's Foods?

A. No purchases.

Q. Boullo Food Products?

A. No purchases.

Q. The Hoger Corporation?

A. No purchases.

Q. Wagner Bros?

A. No purchases.

Q. Do you have any retail stores of your own or are you strictly wholesale?

A. Strictly wholesale.

Q. What area do you serve?

A. A radius of a hundred miles out of Cumberland.

Q. You sell to retail stores?

A. And institutions and restaurants.

Q. Approximately how many retail stores do you sell to?

A. Neighborhood of six hundred.

Mr. Hays: No further questions.

Cross Examination

By Mr. Walker:

903 Q. That Cumberland merchandise, sir?

A. Cumberland merchandise, yes, sir.

Q. You testified that you purchased what you called packer's label products from Morgan Packing Company. Are those advertised brand products?

A. Some of private label and some is Morgan label.

Q. I realize that, Mr. Watson. You testified you purchased some packer's label. By packer's label, did you mean advertised products as opposed to private label products?

A. If you consider Morgan advertised, yes.

Q. Is it advertised at all?

A. I have never seen it advertised.

Q. Did you purchase from Morgan Packing Company prior to 1951?

A. Yes, sir.

Q. Did you purchase from Gibbs and Company prior to 1951?

A. Yes, sir.

Q. You did not identify those products. What were they that you purchased from Gibbs and Company?

A. Tomato products.

Q. Were those private label?

A. No. Packer's label.

Q. Did you purchase from Hunt Foods of California prior to 1951?

A. Yes.

904 Q. Those were advertised products, were they not?

A. Hunt considered advertised, yes, sir.

Q. Did you purchase from American Home Foods prior to 1951?

A. Yes, sir.

Q. Are those advertised products?

A. Yes, sir.

Q. The figures you gave show an increase in your purchases from American Home Foods over the years. What in your opinion accounts for that increase, Mr. Watson?

A. American Home Foods has added more items. American Home Foods has advertised extensively and it seems as though the public are more interested in Italian foods today than what they were in the past and that is the bulk of the American Home Foods items that we buy.

Q. What are the brand names there?

A. Chef Boy-Ar-Dee.

Q. You testified you purchased some private label and some what you called packer's label from Armours. Are those packer's label products advertised products?

A. Yes, sir.

Q. As between the two which accounts for most of your purchases from Armour?

A. By far Armour's brand.

Q. Are those products advertised in your area?

A. Armours, yes, sir.

905 Q. Did you purchase from Armour prior to 1951?

A. Yes, sir.

Q. What accounts, in your opinion, for your increase in purchases from Armour?

A. Well, the last few years we were buying Armours milk, and several years ago, two, three years ago, I don't quite recall now, Armour closed his own distributing point in Cumberland as far as canned meats are concerned that canned meat business was put through our distributing house. We acted as a distributor for Armour's canned meats.

Q. Prior to that time Armour distributed its products directly to the retail stores?

A. That is right.

Q. You testified, Mr. Watson, to purchases in one year from Bedford Products. What were those products, sir?

A. Preserving, jellies.

Q. Why did you purchase from Bedford Products in that one year?

A. I thought, and I assumed that particular year, they had a little better price than the regular source of supply.

Q. Did you buy those products from a local broker?

A. From a broker, yes, sir.

Q. What baby foods have you carried over the years, Mr. Watson?

A. At the present time we have H. J. Heinz.

906 Q. What did you carry before you carried H. J. Heinz?

A. We carried Gerbers for a short time.

Q. Why did you change from Gerbers to H. J. Heinz?

A. H. J. Heinz discontinued distributing to the retailers themselves and we act as distributor for H. J. Heinz products.

Q. Was H. J. Heinz a more popular product than Gerbers locally?

A. More popular, we have more promotion behind the item.

Q. That is the H. J. Heinz promotion or your promotion?

A. H. J. Heinz.

Q. What is the name of the product you buy from Grocery Store Products, sir?

A. Kitchen Bouquet.

Q. Is that an advertised item in your area?

A. Yes, sir.

Q. Do you buy that through a broker?

A. Through a broker, right.

Q. Do you get requests for that product from the stores you service?

A. Yes, sir.

Q. Is that why you carry it?

A. That is right?

Q. What products do you purchase of George A. Hormel?

A. Their canned meats.

Q. What are the names of those products, sir?

907 A. They have Dinty Moore beef stew and Spam.

Q. Are those products advertised locally?

A. Yes, sir.

Q. Did you purchase their products prior to 1951?

A. Yes, sir.

Q. He neglected to ask you if you purchased from Grocery Store Products prior to 1951?

A. Yes, sir.

Q. Did you purchase from Jewett and Sherman prior to 1951?

A. Yes, sir.

Q. Why did you buy products from Jewett and Sherman?

A. They have salad dressing which we need in order to

round out our line. They have items we need in our business.

Q. Where are they located, sir?

A. Baltimore.

Q. Does that have anything to do with your purchase from them?

A. Yes, sir. It is low freight rate from Baltimore to Cumberland.

Q. What products do you purchase from Lipton Tea Company?

A. Teas and soups.

Q. Are those products advertised products, sir?

A. Yes, sir.

Q. The figures you gave show some increase in your purchases from the Lipton Company. What in your
908 opinion accounts for that increase, Mr. Watson?

A. The general consumption of tea, according to statistics the highest at any time at the present time.

Q. Do you have more demand for those products?

A. More demand for tea?

Q. What products do you purchase from Oscar Mayer and Company?

A. Canned meats.

Q. Are those products advertised in your area, sir?

A. Yes, sir.

Q. How do you purchase those products?

A. Through a broker.

Q. Why do you buy products from Oscar Mayer and Company?

A. Because we have some call for them. Consumer demand.

Q. What products do you buy from Recipe Foods? What is the nature of those products, sir?

A. Salad dressing, mustard.

Q. Why don't you buy dressings from the Grundy Center plants of Consolidated?

A. Freight rates too high.

Q. Did you purchase from Recipe Foods prior to 1950?

A. Yes, sir.

Q. You testified, I believe, Mr. Watson, that you purchased from P. J. Ritter Company, both private label and packer's label: Which of these two account for most of your purchases?

909 A. Packer's label.

Q. What are those products, sir?

A. P. J. Ritter packs tomato products, that is catsup, tomato juice, and asparagus, pork and beans.

Q. Are those products advertised?

A. Yes, sir.

Q. Do you purchase those products from a broker?

A. From a broker.

Q. Did you purchase Ritter prior to 1950?

A. Yes, sir.

Q. What products do you purchase from Rival Packing Company?

A. Pet food.

Q. Are those advertised products?

A. Yes, sir.

Q. Did you purchase those products prior to 1950?

A. Yes, sir.

Q. What in your opinion accounts for the increase in your purchases of those products?

A. The general increase in dog food in all lines, all dog food has increased in sales.

Q. So there is more demand for dog food products?

A. More than ever.

Q. You testified, I believe, to purchases in one or two years from Wass Foods. Do you recall the circumstances surrounding those purchases, why you purchased those products?

910 A. Wass Foods came out with a sauce that we bought and if I recall right we also get some chicken and beef base from Wass Foods.

Q. Why do you choose the products of Wass?

A. Wass had a good product at the price we considered right.

Q. You testified you purchased in one year, I believe, from Wyler and Company. Do you recall the circumstances surrounding that purchase, why you made it?

A. Yes, Wyler that particular time they had a special price on it. We could retail it at ten cents, that is the retail merchant could retail it at ten cents. We bought a quantity so we would have an item that could be sold at ten cents.

Q. Was that a private label product, sir?

A. No, sir, that was a Wyler's item.

Q. Over the years, Mr. Watson, what has been the trend of your purchases of private label products, has it been up, down, or about the same?

A. It hasn't been any increase in it.

Q. Has it been about the same?

A. About the same, I would say.

Q. What percentage of your buying do you do through the Chicago or West Coast buying offices of Consolidated?

A. Approximately five per cent.

Q. What was the total dollar volume of your pur-
911 chases during 1958?

A. Two and three quarter million.

Q. What has been the over all trend of your purchases since 1950?

A. They have been higher.

Q. What has been the trend of your purchases from most of your suppliers since 1950?

A. Been higher.

Q. What in your opinion are the reasons for these trends?

A. We have increased the business since 1950; general increase in business.

Q. About what percentage of your business is sales to institutional users?

A. Ten to fifteen per cent.

Mr. Walker: No more questions, sir.

Redirect Examination

By Mr. Hays:

Q. I believe you testified that you formerly sold Gerber products and you took on Heinz products and did not carry Gerber products?

A. That is right.

Q. Why did you not also carry Gerber products with the Heinz products?

A. Heinz was better accepted in that territory, Cumberland area.

912 Q. Gerber did have some acceptance immediately before you changed to Heinz. Is that correct?

A. Had some acceptance.

Q. Heinz came along with better acceptance so you dropped Gerbers?

A. That is right.

Q. You did not deem it advisable to carry both the Heinz and Gerber lines?

A. That is right.

Q. You have stated that the reason for carrying—correct me if I am wrong, I am trying to summarize your testimony—that the reason for carrying some of these branded products was caused by consumer demand, is that right?

A. Yes.

Q. As a matter of fact, you are in business to make money, are you not?

A. Yes, sir.

Q. In spite of the consumer demand you would not

carry the products unless you could make money for your brands, would you?

A. We would try not to.

Q. Consequently the price at which these products be bought and sold determines to a great extent also your reason for purchasing them. Is that correct?

A. Coupled with the fact the volume of business we
913 can get on them.

Q. I believe you testified that, I am quoting, now, over the years your private label purchases had remained the same?

A. I would say yes, sir, about the same.

Q. When you say over the years, what do you mean by that, what period are you covering?

A. We are talking between 1951 and '58.

Q. How long have you been at that branch?

A. As Manager?

Q. Yes, sir.

A. Since 1941.

Q. Beginning in 1941 and comparing that with 1951, how do your sales of private label products compare?

A. Comparison with our other sales?

Q. Yes.

A. I would say we had about 50 per cent private label and 50 per cent nationally advertised.

Q. In both those years?

A. Yes, sir, from that period on.

Q. From 1941 to the present?

A. Yes, sir, to 1951.

Q. Today what is the relationship percentagewise between your private label sales and your nationally advertised sales?

A. My private label sales are not as great as they were in '51 proportionately.

914 Q. They have gone down?

A. Percentagewise.

Q. Is that the only two types of sales you make, the advertised sales and the private label sales? Does that consist of your total business?

A. Well, now, we have some other items besides food items. We handle a little hardware too.

Q. Do all of your food items, do you consider them either private label sales or nationally advertised sales?

A. We would have some items that wouldn't be considered advertised, either would they have our label on them. We pick up—

Q. So when you say in 1951 that your business was 50 per cent private label sales and 50 per cent nationally advertised sales, that is not quite correct, is it?

A. Sir, repeat that.

Q. When you testified that your 1951 sales consisted of 50 per cent private label sales and 50 per cent nationally advertised sales, that statement was not correct, was it?

A. I think it was.

Mr. Walker: He was talking between those two groups. The testimony is quite clear.

Mr. Hays: May he answer. It is not clear to me, Mr. Walker.

Mr. Walker: I think some of the confusion is due to the questions not the answer.

915 Mr. Hays: May he answer?

Mr. Walker: Go right ahead.

The Witness: Repeat that question again.

By Mr. Hays:

Q. When you testified that in 1951, 50 per cent of your sales were private label sales and 50 per cent were nationally advertised sales, that statement is not quite correct, is it?

A. No, sir, I think to the best of my knowledge that statement is correct, in those years.

Q. In other words, in 1951 you consider that every sale

that was not a private label sale was a sale of nationally advertised products. Is that right?

A. It all depends on what you call advertised items.

Q. That is what I am trying to determine from you, is what you meant by nationally advertised items when you said in 1951, 50 per cent of your sales consisted of such.

A. In '51 I would say half of our business, 50 per cent of our business was private label and 50 per cent of it was as we so-call nationally advertised, or advertised items.

Q. Is it true that some of your suppliers of nationally advertised food products will not sell to you if you carry a competing food product that is also nationally advertised?

A. Repeat that question again.

Q. Is it true that some of your suppliers of food products, that is nationally advertised food products, will 916 not sell to you if you carry a competing line of nationally advertised food products?

A. I don't know of any one that has ever refused to sell me.

Mr. Walker: I am sorry, sir, I didn't hear.

The Witness: I didn't know of any national advertised brands that didn't offer it to me that I didn't accept it.

By Mr. Hays:

Q. That does not quite answer the question. Will you read the question back, please.

(The reporter read the question as follows:

"Question: Is it true that some of you[illegible]uppliers of food products, that is nationally advertised food products, will not sell to you if you carry a competing line of nationally advertised food products?")

The Witness: I do not know of any of them that would refuse to sell me if I agree to buy it.

* * *

S. J. RINEHART was thereupon called as a witness
917 for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Will you, please, state your name, address, and place of business.

A. S. J. Rinehart, 1510 Lindwood Avenue, Southwest, Canton, Ohio.

Q. You are President of the Dannemiller Grocery Division of Consolidated Foods?

A. That is right.

Q. How long have you been President, sir.

A. About 14 years.

Q. Describe the operations of the Dannemiller Grocery Division.

A. We operate a general wholesale grocery house selling to anybody that has a purveyor's license, restaurants, grocery stores and such.

Q. What area are your sales made in?

A. What area?

Q. What is your sales territory?

A. We run in this division, we run up to, we run about 100 to 120 miles north and south, and about 100 miles east and west.

Q. To whom are you responsible in the Consolidated Foods?

918 A. To Mr. Kennedy in Chicago.

Q. He is your immediate superior?

A. That is right, sir.

Q. As president of the Dannemiller Grocery Division, are you familiar with your suppliers of food products?

A. I am.

Q. For purpose of my next question, will you understand

when I name a company, that you will state whether or not you purchase from that company during 1951 to the present, and if you did make purchases, the annual dollar volume of those purchases and whether or not they were private label or branded products?

A. Yes, sir.

Q. Wyler and Company?

A. We bought from Wyler and Company branded merchandise in 1951, one hundred; '52, four hundred dollars; '53, four hundred dollars; '54, one hundred dollars; '55, one hundred dollars; '56, five hundred dollars; '57, two hundred dollars; and '58 one thousand dollars. Those are approximate.

Q. Yes, sir. Custom Foods?

A. Custom Foods, we buy from them. That is private label, and we started to buy in '53, nothing prior to '53. In 1953, three thousand seven hundred; '54, one thousand seven hundred; '55, one thousand four hundred; '56, eight hundred; '57, two hundred; and '58, $50.

919 Q. Wass Food Products?

A. We buy from Wass Food Products, private label, spaghetti sauce and meats. We had no purchases from Wass until 1954. '54 was one thousand dollars; '55, $2,500; '56, three thousand five hundred; '57, four thousand; and '58, four thousand.

Q. Armour and Company?

A. Armour and Company, that is advertised merchandise. In 1951, three thousand dollars; '52, two thousand five hundred; '53, $30,000; '54, thirty thousand; '55, thirty thousand; '56, thirty thousand; '57, forty thousand; and '58, thirty thousand.

Q. Michigan Mushroom Company?

A. Michigan Mushoom Company, we buy from them. That is advertised label. This was one shipment only that

we bought, mushrooms in glass in 1957, four hundred dollars.

Q. Indiana Mushroom Corporation?

A. Indiana, we buy from them, private label mushrooms. Nothing before 1953. First order in '53, $100. We bought nothing in '54. We bought in '55, $50; in '56 one hundred; but in '57 $50 and that is the extent of the business with them.

Q. Gerber Baby Foods?

A. Gerber baby foods, advertised baby foods. Now, up until '52 the purchases were very light. I would say they run less than $500. Starting really to do some buying there was in '53. That was $15,000; and '54, it was $12,000; '55, it was $7,000; '56 was $9,000; '57 was $8,000; '58 was $5,000.

920 Q. What were the extents of your sales before 1954 in this product, Gerber Products?

A. Before 1954, well, I will explain how this was. Up until 1953 we did not handle any baby food at all except the dry pack, the cereal foods. That, of course, did not amount to much money and we had gotten smaller shipments after that. Ahead of that I would say, I know from '49 to '52 it was less than $500. Then we took over another wholesale house in that area who were big users, in fact they done the baby food business and we left them have it. So we started Gerbers and that is the reason it started with a bank, 15,000, and then down to twelve and it gradually died down until at the present time we have again discontinued it for '59.

Q. You have discontinued it in '59?

A. Yes.

Q. Do not handle baby products at all?

A. Yes, we handle another brand.

Q. What brand is that?

A. Heinz. Heinz and Beechnut.

Q. Lake Odessa Canning Company?

A. We do not buy from Lake Odessa.

Q. Oscar Mayer and Company?

A. Oscar Mayer, that is, we buy from them, private label canned heats. 1951, $2,200; '52, one thousand; '53, one thousand; '54, one thousand; '55, $250; '56, $150; '57, $150; and '58 $150.

921 Q. Milwaukee Spice Mills?

A. We do not purchase from them.

Q. Jewett and Sherman?

A. That is Holsom. We carry that. We buy from Holsom occasionally. That is factory label, or rather branded as you call it. 1951 was $2,000; '52 was two thousand five hundred; '53 was seven hundred; '54 was two thousand five hundred; '55 was three thousand five hundred; '56 was one thousand five hundred; '57 was three thousand five hundred; 58 was $6,000.

Q. Lipton Tea Company?

A. Lipton Tea we buy from Lipton Tea, advertised only. That is teas and soup mixes and Italian dressing. In 1951 we bought seven thousand five hundred; '52, six thousand five hundred; '53, thirty thousand; '54, twenty thousand; '55, twenty thousand; '56, eighteen thousand; and '57, 20 thousand; and '58, twenty thousand.

Q. That is branded products?

A. That is right.

Q. George A. Hormel and Company?

A. George A. Hormel, we buy from them. Advertised canned meats. Purchases in '51 were $15,000; '52 were eighteen thousand; '53 were twenty-two thousand; '54 was twenty thousand; '55 was fifteen thousand; '56 was twenty-five thousand; '57 was thirty thousand; '58 was thirty thousand.

Q. Bedford Products?

922 A. Bedford Products, this is starting with '51 was

the time we were trying to get rid of Bedford Products and we got the business for 1951 here was only $700. We have not bought anything from them since.

Q. Les Pommiers Cannery?

A. Les Pommiers we buy from them. That is private label onion soup. '55, $250; '56, $100; '57, $100. That is the end of the soup.

Q. Blue Point Company?

A. We do not buy from them.

Q. J. J. Gielow and Sons?

A. Yes, we buy from Gielow. Private label, fancy pickles. In '51, $18,000; '52, $17,000; '53, $19,000; '54, $17,000; '55, $12,000; '56, $14,000; '57, $15,000; '58, $8,000.

Q. Recipe Foods?

A. Recipe Foods, we buy from Recipe Foods, private label, dressing and prune juice. 1951 was $4,000; 1952 was $12,000; from 1953 to 1957 per year run about seventeen to eighteen thousand dollars; and in 1958, $16,000.

Q. J. L. Read Foods?

A. J. L. Read, we buy from them, private label, potato salad and dressings. In 1951—we did not start dealing there until 1953. Our first year, 1953 was twenty thousand; '54 was eighteen thousand; '55 was twenty-five thousand; '56 was seven thousand five hundred; '57 was three 923 thousand five hundred; '58 was $600.

Q. P. J. Ritter Company?

A. We do not deal with them.

Q. Woolson Spice Company?

A. We do deal with Woolson Spice Company. We buy private label spices, and in 1951 we purchased $2,000; 1952, $2,000; '53, seven thousand five hundred; '54, five thousand; '55, five thousand; '56, twelve thousand five hundred; '57, eighteen thousand; and '58, eighteen thousand.

Q. Joseph De Frates Company?

A. We do not buy from them.

Q. Moore and Company?

A. No.

Q. Rival Packing Company?

A. Yes, Rival Packing Company we buy factory label dog food, or advertised dog food rather. We started in 1955, $15 [sic]; '56, $4,000; '57, $5,800; '58, $5,500.

Q. Did you carry their products prior to 1955?

A. We did not. No.

Q. F. M. Wilson Canning Company?

A. F. M. Wilson Canning Company we buy from, and that is private label California fruits. Now, we did buy from them before 1951. But during the year of 1951 we didn't give them a nickel's worth of business. But starting with '52, $12,000; '53 was ten thousand; '54 was twenty thousand five; '55 was ten thousand; '56 was fifteeen
924 thousand; '57 was twenty-eight thousand; and '58, twenty thousand.

Q. What were those figures for? Wilson Canning Company?

A. Frank Wilson. Yes, that is right.

Q. Did you purchase from Blue Seal Foods?

A. Yes.

Q. I do not recall whether you gave those figures or not.

A. For Blue Seal, I don't think we did.

Q. Will you give those figures?

A. We bought private label foods from them, and in 1951 we bought $3,600 worth; and in 1952, we bought $8,000 worth, and then we discontinued that source of supply.

Q. Alma Canning Company?

A. No.

Q. Jay Freeman and Company?

A. No.

Q. Omega Food Products?

A. No.

Q. Mayclin Sales?

A. No.

Q. McLean Frozen Pies?

A. No.

Q. Gino Corporation?

A. No.

Q. Henderson's Portion Pack?

A. No.

925 Q. National Brands?

A. No.

Q. Dixie Lily Milling Company?

A. No.

Q. Nelson Brokerage Company?

A. No.

Q. Elbeck Milling Company?

A. No.

Q. American Frigid Company?

A. No.

Q. Great China Food Products?

A. No.

Q. Aurora Frozen Foods?

A. Yes. Aurora Frozen Foods we buy some private label mushroom sauce. There was nothing before 1955. In 1955, we bought one hundred; '56, $400; '57, $400; and '58, $600.

Q. Vevco Foods?

A. No.

Q. Terry Foods?

A. No.

Q. Morgan Packing Company?

A. Yes. Now, Morgan Packing Company is a source of supply with us, and I will have to give you strictly estimates and it is hard for me to give them to you by the year. There is lots of these here, this Morgan especially, that I

926 could give you the—about the total we buy for the year

on an average if I can go from '51 to '58. Would that be satisfactory?

Q. Yes, sir.

A. That runs about $40,000 for Morgan Packing Company.

Q. Per year?

A. Per year, yes.

Q. In other words—

A. That is private label and branded.

Q. In other words, there might be a period of some nine months were no purchases were made, is that correct?

A. That is correct. If you care to I will tell you the history of this company with us, is that they pack dry pack merchandise. Then, they pack cheap merchandise. When you take a notion you want to sell somebody a lots of cheap merchandise you get it off of Morgan. That is the reason that I can't give it to you by year, because some years are big and others are not quite as big, you see. It is not junk. It is not junk, but it is not what you would want.

Q. Midwest Food Packers?

A. No.

Q. Gibbs and Company?

A. No.

Q. Manischewitz Foods Products?

A. No.

927 Q. American Home Foods?

A. Yes. American Home Foods, we buy both advertised and private label Italian Foods entirely. In '51, the business was $20,000; in '52, it was $9,000; '53, it was $25,000; '54, twenty thousand; '55, twenty thousand; '56, twenty-five thousand; '57, twenty thousand; and '58, twenty-two thousand.

Q. Beechnut Packing Company?

A. Yes, that is another one here I have to handle the same as Morgan. Beechnut Packing Company, that is ad-

vertised merchandise that we buy there and it consists of baby food. We buy about, per year, thirty thousand. That has been since 1953, because before that time we didn't handle any baby food.

Q. You continue to buy from them today?

A. Yes, we buy from them and we also buy from Heinz. We have two of them.

Q. Croyden House Foods?

A. No.

Q. Blue Point Division of General Foods?

A. No, sir.

Q. LaFayette Packing Company?

A. No, sir.

Q. Leigh Food Products?

A. No, sir.

Q. Fred Mushroom Products?

A. No, sir.

928 Q. Hunt Foods?

A. Yes, Hunt Foods comes in that same category as Morgan and Beechnut. Hunt Foods we buy from California. We buy their fruits, have for years. We buy certain items that sell real well in our territory, and the business is pretty steady and it will run along about $20,000 a year off of Hunt Foods.

Q. Manning, Inc.?

A. No.

Q. Jacksonville Milling Company?

A. No.

Q. Barra Frozen Products?

A. No.

Q. Tone Bros?

A. No, sir.

Q. Mother's Foods?

A. No, sir.

Q. Boullo Food Products?

A. No, sir.

Q. The Hoger Corporation?

A. No, sir.

Q. Wagner Bros?

A. No, sir.

Mr. Hays: Cross examine.

Cross Examination

By Mr. Walker:

929 Q. Where are the centers of supply, if I may use that term, Mr. Rinehart, for the Dannemiller Division?

A. You mean distributing points?

Q. Yes, sir.

A. We have one in Cleveland, Ohio, and one in Akron, Ohio, and one in Canton, Ohio.

Q. The headquarters unit is where?

A. Canton, Ohio.

Q. Would you please describe since 1951, Mr. Rinehart, the changes in the structure of this Division, including these units you have just mentioned.

A. Well, the first unit there is the one at Canton, Ohio, which is called the Dannemiller Grocery Division. Then Consolidated acquired the Weideman Company at Cleveland, Ohio. The Weideman Company at Cleveland, Ohio, owned the Summit Wholesale Grocery Company at Akron. So the Chicago headquarters then attached the Summit Wholesale Grocery Company on to the Dannemiller Division. That made two branches in the Dannemiller Division. Then, very shortly after that, why, they leased a warehouse in Cleveland and started, it was a Reid Murdoch branch at that time when they started that out, but it was so far removed from Chicago that Mr. Kennedy turned that one over so that made the third branch in the Dannemiller Division. Canton, and Akron, and Cleveland. All invoices and so forth are paid down at Canton.

930 Q. When did Akron become a part of the Dannemiller Division?

A. 1953.

Q. When did the Cleveland branch become a part of the Division?

A. The same time, '53.

Q. You have your own private label that you use, do you not, sir?

A. At Canton?

Q. Yes, which would be the Dannemiller Division.

A. Oh, yes.

Q. What is that called?

A. Black and White is the one used at Canton, and Monarch, of course, which is used in all three.

Q. I mean by your own, I mean one that is used within the Dannemiller Division only?

A. Yes, that is the Black and White label.

Q. Are you free to choose you own suppliers for the Black and White private label merchandise?

A. Oh, yes, sir.

Q. Do you have to use the approved buying list put out by the central buying office for your purchases of products for the Black and White label?

A. Oh, no.

Q. Would you, please, describe now, Mr. Rinehart,
931 the division of purchasing authority among these three branches within the Dannemiller Division.

A. Well, let's start, I imagine this is what you mean, let's start at Cleveland and Akron, because they are not under our roof. They want an order. They write this order up on the requisition and they mail that order to Canton. We check the order over down there for various reasons to see, probably Cleveland gets an order in there and maybe Akron needs a little of the same kind of merchandise and probably Canton needs some, so we try to make a truckload.

It is to save freight we do that. Then, they are mailed to the Chicago buying office and they handle them from there, wherever they decide to buy that merchandise. That is for Monarch merchandise.

Q. What about the other products?

A. The staple groceries?

Q. Your nonprivate label and your own private label?

A. My own private label I mail my order right into the supplier that I choose, and I suppose the other stuff you mean like Del Monte and that kind of stuff, Akron and Cleveland buy that direct as they need it, sending me a copy of their purchase order.

Q. They are free to choose their sources of supply?

A. Yes, they are.

Q. Will you wait until I finish the question, please?

932 A. Well, you take so long.

Q. I want to be sure you get the question.

A. All right.

Q. As to the products that are nonprivate label, are the branches free to choose among different suppliers for those products?

A. Oh, yes.

Q. Over the years, Mr. Rinehart, from 1951 to the present, what has been the trend of your purchases of private label products as opposed to other nonprivate label food products?

A. Private label foods in our particular set up, of course, are not, the loss has been greater in private label foods than it has on nationally advertised foods. One thing is that the smaller stores which we sell, which are our best customers are gradually going out of business and this business is going to the super markets. Of course, the super market take the advertised merchandise because that is the one that the lady buys because she seen it on the television and heard it on the radio. So, I would say while our pur-

chases are all down, but then, private label is down more than the nationally advertised.

Q. Did you purchase any products from the Morgan Packing Company prior to 1951, sir?

A. Oh, yes.

Q. You testified, Mr. Rinehart, to an average per
933 year figure of your purchases from Morgan Packing Company?

A. Yes.

Q. Do I understand that there were considerable fluctuations within the years on those purchases?

A. Oh, yes.

Q. Would there be some years where you did not purchase any or very little products?

A. Very little, but we have always purchased something every year.

Q. Did you purchase products from Hunt Foods of California prior to 1951?

A. Oh, yes.

Q. You testified on direct examination, Mr. Rinehart, that some of the Hunt foods items that you buy sell real well in your territory. What are those products?

A. We have a good sale for Hunt peaches, Hunt's pears, Hunt's fruit cocktail, and then, of course, their tomato products, Hunt's tomato sauce is a must in that area.

Q. They are all advertised products. Is that right, sir?

A. Yes.

Q. What are the brands of products you purchased from American Home Foods, the nonprivate label? What is the name of the brands?

A. American Home Foods, that is Chef Boy-Ar-Dee.

Q. Did you purchase from American Home Foods prior to 1951?

934 A. Oh, yes.

Q. What types of products have you purchased

from Armour and Company, sir?

A. Armour and Company, the biggest ends of those purchases are soaps. We purchase very few, I think we have only had—well, now, wait, meats, you better take meats. I would say meats and soaps, soaps being the big seller.

Q. Are those canned meats, sir?

A. They are, yes. Advertised canned meats.

Q. Those are advertised products in that area?

A. That is right, yes.

Q. Did you purchase from Armour prior to 1950?

A. Yes.

Q. The figures you gave on your purchases from Armour, Mr. Rinehart, show a very large increase in the year 1953?

A. That is right.

Q. What in your opinion accounts for that increase?

A. As I told you, that Akron and Cleveland come into the picture as a part of the Dannemiller Division in 1953. So during 1950 and '51 and '52, the purchases were only Canton office purchases, which were small. Then when Akron come in, Akron carried a full line of Armour's meats and soaps and Armour's soaps have been gaining in favor and that threw that thing right out of line and made it thirty thousand and it has been practically that ever since.

935 Q. The Bedford Products Company you testified you bought from them. What type of products are those?

A. We bought preserves and jellies from them.

Q. Were those packed under the Black and White label?

A. Yes.

Q. Did you purchase through a local broker?

A. That is right.

Q. Did you purchase from this company prior to 1950?

A. Yes.

Q. What types of products did you purchase from Blue Seal Foods.

A. Dressings.

Q. Were those packed under the Black and White label?

A. They were at the time that we bought them they were packed under Black and White label.

Q. Did you purchase those through a broker?

A. Yes.

Q. Did your purchase from Blue Seal Foods prior to 1950?

A. Oh, yes.

Q. Do you sell some products to institutional users, sir?

A. Yes.

Q. Are the products you purchase from Custom Foods Company for institutional use?

A. Custom Foods is entirely for institutional food; that is, the Cleveland branch uses those.

Q. Did you purchase products from the Gerber 936 Company prior to 1950, Mr. Rinehart?

A. No. Well, now, wait, yes. Baby cereals, that is the dry cereal package, but we did not handle their regular canned baby food until 1953.

Q. Why did you change to the Heinz and Beechnut baby foods, Mr. Rinehart?

A. Well, I can't give you any good reason. Akron, our branch at Akron never used Gerbers, and in order to buy Beechnut, and they handled Beechnut. They sold a lot of baby food. We needed some help in order to get trucks. You buy that in—you know, the bigger quantity you buy the cheaper you get it. So we swung over to Beechnut so it would help our purchasing. Inasmuch as we have never handled Gerbers before, it didn't make any difference to our customers which one they got. Well, then, along come Heinz, we took on Heinz line. When we took on Heinz line,

we had to take on Heinz baby food. So that is the reason we got two baby foods. We don't need two baby foods, but we have got them.

Q. Are your purchases from J. J. Gielow and Sons private label products under the Black and White label?

A. Yes.

Q. Do you purchase those products from a broker?

A. Yes.

Q. Did you purchase from Gielow prior to 1950?

A. Yes.

937 Q. What is the product you purchase from Grocery Store Products, sir?

A. Grocery Store Products we buy Kitchen Bouquet.

Q. That is an advertised product?

A. Yes.

Q. Did you purchase from Grocery Store Products prior to 1950?

A. Yes.

Q. Did you purchase that product from a broker?

A. Yes.

Q. Have you purchased products from Hormel prior to 1951?

A. Yes.

Q. The figures you gave showed a marked increase in your purchases from Hormel. What in your opinion accounts for that increase, Mr. Rinehart?

A. Well, that runs right along with taking on two branches to the north, Akron and Cleveland. You see there in '51 it run 15,000 and 18,000, that was Canton purchases alone. Then, we took on Akron and Cleveland in there and now it runs up until today it is $30,000 by the additional business.

Q. Did you purchase products from the Lipton Company prior to 1951?

A. Oh, yes.

Q. Were those products purchased through a broker?

A. They are purchased through a broker or, in this
938 case, it is a factory representative.

Q. The figures you gave, Mr, Rinehart, show an increase in purchases here. What in your opinion accounts for that increase?

A. You have got the same thing as we had before. You notice that in my statement before up until '52 we hit around six, seven thousand dollars worth of merchandise. Then in '53, when we took on two branches to the north of us, why it jumped to thirty thousand, twenty thousand, twenty, eighteen and now it is right around twenty thousand. It is the addition of two branches.

Q. Are the products that you purchase from Oscar Mayer and Company private label products or nonprivate label?

A. Private label.

Q. Are you sure of that Mr. Rinehart?

A. Oscar Mayer?

Q. Oscar Mayer and Company.

A. Well, I don't know that is what I have got it marked here. I doubt at that, I think that I goofed a bit on that. I think that that is not private label.

Q. Do you know what kind of products they are, do you remember, sir?

A. Pigs feet and stuff like that.

Q. Do you purchase those products through a broker?

A. Yes, $150 a year.

939 Q. Did you purchase from Oscar Mayer prior to 1951?

A. Yes.

Q. Do you purchase products from Michigan Mushroom Company through a broker?

A. Yes.

Q. You testified to purchases, Mr. Rinehart, from the

Receipe Foods Company. You said those were private label purchases.

A. That is right.

Q. Are those for the Black and White private label?

A. Those are for the Black and White private label.

Q. Did you purchase from Receipe prior to 1951?

A. Yes.

Q. What types of products do you purchase from the Rival Packing Company, sir?

A. Rival dog food.

Q. Is that an advertised product?

A. Yes.

Q. I believe you testified that you first took on that product in 1955. Is that right, sir?

A. That is right.

Q. Why did you commence purchasing this in 1955?

A. Well, the real truth of it is we were never solicited and we did not have lots of demand for it. We had what we figures was plenty of brands of dog foods until there started to be a little bit of activity through advertising, so we 940 started to buy Rival dog food. We don't sell a great deal of it, but it was through the activity and advertising that they put into the area.

Q. What type of products did you purchase from Wass Food Products?

A. One only, that is Monarch barbecue sauce.

Q. Your figures show an increase in purchases over the years here, since 1954, Mr. Rinehart.

A. Yes.

Q. What in your opinion accounts for that increase?

A. Well, what is it, outdoor living. That would be about the answer for that I guess. There is just more demand for barbecue sauce as time goes on.

Q. What type of products do you purchase from Wyler and Company, sir?

A. Wyler and Company, we purchase dehydrated chicken rice soup and chicken noodle soup.

Q. Are those advertised products, sir?

A. Well, not in our area, they are not, no.

Q. Do you purchase those products through a broker?

A. Yes.

Q. About what percentage of your total purchases go through the Chicago or West Coast buying offices of Consolidated, Sir?

A. Well, as near as I can figure that one out, I would say that it would be approximately 10 per cent of our 941 purchases.

Q. What was the approximate total dollar volume of your purchases in 1958?

A. Eight and a half million.

Q. What would you say has been the over all trend of your purchases, Mr. Rinehart, in the period from 1951 to 1958?

A. I am sorry to report that our purchases are down, our sales are down and our purchases are down.

Q. This includes the —

A. Now, wait a minute. I mean in general. Canton and Akron are down considerably. Cleveland is not down as much as — although somewhat.

Q. Mr. Rinehart, what I wanted to ask you, the comparison of your total purchases of the Dannemiller Division in 1951, and in, say, 1958, has there been increase or decrease as between those two years in your total purchases?

A. A decrease.

Q. In giving that answer, Mr. Rinehart, are you including the total purchases in 1958 for all of the branches?

A. No, I see what you mean. I beg your pardon. No, it would be an increase. I was figuring Dannemiller only in '51 and the whole jamboree in '58.

Q. In taking the Dannemiller in 1951 and the whole jamboree in 1958, it would be an increase?

A. That is right. I am sorry.

942 Q. Just to make it clear for the record, because sometimes I don't believe you stated it, all of the dollar figures purchases you gave were estimates.

A. Yes, I stated that.

Mr. Walker: No further questions.

Redirect Examination

By Mr. Hays:

Q. Just a few questions, Mr. Rinehart. When you stated that you made your purchases from brokers, those brokers were representatives of the seller, were they not?

A. That is correct.

Q. Comparing the Dannemiller operation in 1951 with the Dannemiller operation as it is today, exclusive of those additions in Cleveland and Akron, I believe, are your sales up or down?

A. Exclusive of Akron and Cleveland, I would say our sales are down.

Q. When you consolidated in 1953, I believe, the old Dannemiller Division with the operation in Cleveland and Akron, was there any readjustment in the suppliers for the total over all group? Did you drop any suppliers?

A. No, we did not.

Q. Did you add any?

A. No. Each one kept their own suppliers that they had.

943 The Akron office now was the old Summit Wholesale Grocery. They bought their merchandise the same as they did when they were the Summit Wholesale. Cleveland bought merchandise just the same as when it was under Reid Murdoch in Chicago. Canton does the same thing. There was no change, no.

Mr. Hays: That is all I have.

Hearing Examiner Kolb: Any other questions?

Mr. Walker: Just one, Your Honor. I just want to make it clear, especially since it has come up a number of times and perhaps, Mr. Rinehart can clarify it for us.

Recross Examination

By Mr. Walker:

Q. These brokers we have been talking about, you testified their representatives of the seller. These brokers represent the large number of companies, don't they?

A. Oh, yes.

Q. They don't represent exclusively the one seller?

A. Oh, no, no. There may be eight, ten, fifteen principals that they represent.

* * *

944 JOHN DESPAUX was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Will you please state and spell your name, please.

A. John Despaux, D-e-s-p-a-u-x.

Q. What is your home address?

A. 3304 Grenton Avenue.

Q. What is your business address?

A. 1300 South Monroe Street, Baltimore, Maryland.

Q. By whom are you employed?

A. Monarch Finer Foods Division, Consolidated Foods Corporation.

Q. You are the Manager of that branch at Baltimore, Maryland. Is that right?

A. I am the Comptroller of that division.

Q. Do you have anything to do with the Monarch Finer Foods Division at Roanoke?

A. I do not.

Q. As Comptroller, what do you do?

A. As Comptroller, it is supervising and controlling
945 the operations within the organization in accordance with general accounting methods and policies, preparation of statistical and other reports, credit and collection management.

Q. What is the Monarch Finer Foods Division at Baltimore, Maryland?

A. Monarch Finer Foods Division at Baltimore, Maryland, are wholesale food distributors, catering to retail grocery stores, institutions, and food service markets.

Q. Do your duties extend to anything beyond the Baltimore operation of the Monarch Finer Foods Division?

A. They do not.

Q. What is the sales area that Baltimore covers?

A. Within the radius of 75 miles of Baltimore City.

Q. Covering Washington?

A. District of Columbia.

Q. And covering Philadelphia?

A. We do not go to Philadelphia.

Q. How long has that Division been in operation, the Baltimore branch of that Division?

A. Well, the Baltimore operation has been in existence as long as Consolidated Foods. It is the old C. D. Kenny Coffee Company.

Q. How long have you held your present position?

A. Thirteen years.

Q. Are you familiar with the suppliers of the Balti-
946 more branch of the Monarch Finer Foods Division?

A. I am.

Q. Will you understand if I indicate to you the name of a company, will you tell me whether or not it has supplied the Baltimore branch of the Monarch Finer Foods Division during the period 1951 to the present. And, if so, whether or not the products supplied were branded or pri-

vate label, and the total amount of purchases and annually for each year from 1951 to the present?

A. I will.

Q. Wyler and Company?

A. Wyler and Company, we purchased dehydrated soup mixes, lemonades. It is a branded product, and from 1951 to '54 it has been estimated we purchased approximately $200 through that period each year, through that period of time. 1955, two hundred; 1956, two hundred; 1957, three hundred; 1958, one thousand.

Q. Custom Foods?

A. Custom Foods, we purchased 1951 through '54 approximately $2,000 per year; 1955, $3,000; '56 and '57, $8,000 each year; 1958, $12,000.

Q. Were those private label or branded products?

A. They were private label institutional business.

Q. Wass Food Products?

A. Wass Food Products, it has been determined 947 and estimated we made purchases in '57 of $600; and in 1958 of $1,500. That is the private label.

Q. No purchases in the years preceding '57?

A. Prior to '57, no.

Q. Armour and Company?

A. Armour and Company, this is a branded item, canned meats, dog food for the years '51 through '54 estimated we purchased from sixty-five to seventy thousand dollars per year. The year '55 is estimated seventy thousand; '56, ninety thousand; in '57, ninety thousand; and in 1958, ninety thousand.

Q. Michigan Mushroom Company?

A. Michigan Mushroom Company, no purchases.

Q. Indiana Mushroom Corporation?

A. Indiana Mushroom Corporation, no purchases.

Q. Gerber Baby Foods?

A. Gerber Baby Foods, branded item. The item is baby foods. The years 1951 through '54 is estimated we purchased from sixty to sixty-five thousand per year; and in 1955, it is sixty-five thousand; 1956, seventy thousand; 1957, eighty-five thousand; and 1958, one hundred twenty thousand.

Q. Lake Odessa Canning Company?

A. Lake Odessa be estimated the years '51 through '54 approximately $2,5— $25,000 per year; 1955, twenty-seven thousand; 1956, forty-seven thousand; 1957, $35,000; and in 1958, forty thousand.

948 Q. Is that private label or branded?

A. Branded.

Q. Oscar Mayer and Company?

A. Oscar Mayer, branded, 1951 through '54 has been estimated we procured approximately thousand dollars per year. 1955, it is a thousand; 1956, twenty-five hundred; 1957, approximately three thousand; 1958, four thousand.

Q. Milwaukee Spice Mills?

A. Milwaukee Spice Mills, no purchases.

Q. Jewett and Sherman?

A. Jewett and Sherman, the years 1951 through 1954, average five to seven thousand dollars per year; 1955, eight thousand dollars per year; 1956, twelve thousand; '57, thirteen thousand; and '58, fiifteen thousand, private label.

Q. Lipton Tea Company?

A. Lipton Tea, branded merchandise, the years 1951 through '54, approximated between seventy and seventy-five thousand dollars per year. The years 1955, eighty thousand; 1956, seventy-eight thousand; '57, seventy-five thousand; and in '58, eighty-eight thousand.

Q. George Hormel and Company?

A. The years 1951 through 1954, approximately forty to fifty thousand dollars per year. 1955 estimated fifty

thousand; 1956, approximately fifty-four thousand; in '57, sixty thousand; 1958, eighty-one thousand.

949 Q. Bedford Products?

A. Bedford Products, 1951 through 1955, estimated from two to four thousand dollars per year; 1956 and '57, ten to twelve thousand; 1958, twenty-one thousand.

Q. That is branded or private label?

A. That is private label.

Q. Les Pommiers Cannery?

A. Les Pommiers Cannery, it is private label. We have had one sale there and that was the year of 1955 of $100, approximately.

Q. Private label?

A. Private label.

Q. Blue Point Company?

A. Blue Point Company is private label, the years 1951 through 1955, approximately thousand dollars per year; 1956, estimated two thousand; 1957, three thousand; and in 1958, three hundred dollars.

Q. J. J. Gielow and Sons?

A. J. J. Gielow, private label. The only determination we could make is estimated during the years of '56 and '57, sales were four to five thousand dollars per year.

Q. No sales prior to that?

A. No sales prior or subsequent thereto.

Q. Recipe Foods?

A. Recipe Foods, that is private label in the retail,
950 private label in the institutional, and also branded merchandise. In addition thereto it is also a private label for one of our voluntary groups. The years 1951 through '54 we estimated our purchases were from forty to forty-five thousand dollars per year; in 1955, it was approximately fifty thousand; in '56, it was seventy-five thousand; and in 1957 and '58, the sales averaged about ninety to hundred thousand dollars per year.

Q. Grocery Store Products?

A. Grocery Store Products is the branded merchandise at the retail level, and also at the institutional level. The years 1951 through '54 averaged about $3,000 per year; and the years 1955 through '58 averaged between three and four thousand dollars per year, estimated.

Q. P. J. Ritter Company?

A. P. J. Ritter is a branded merchandise. '51 through '54 averaged between sixty and sixty-five thousand dollars per year; in 1955 estimated about sixty-five thousand; in '56 through '58, averaged about forty-five thousand dollars per year.

Q. Woolson Spice Company?

A. Woolson Spice, that is private label in retail, private label in institutional. The years 1956 through '58 averaged between four and five hundred dollars per year. No sales prior to '56.

Q. Joseph De Frates Company?

951 A. No purchases.

Q. Moore and Company?

A. No purchases.

Q. Rival Packing Company?

A. Rival Packing Company, 1951 through 1955 averaged about $11,000 per year; 1956 approximately eleven thousand; '57, twelve thousand; and '58, thirteen thousand.

Q. Blue Seal Foods?

A. No purchases.

Q. F. M. Wilson Canning Company?

A. The years — well this is private label on retail level and institutional. The years 1951 through 1954 averaged about $10,000 per year; 1955 through '56, approximately ten to twelve thousand dollars per year; 1957, approximately $20,000 per year; and 1958, $18,000 per year.

Q. Alma Canning Company?

A. Alma Canning Company, branded merchandise, 1951

through 1955, approximately four to six thousand dollars per year; 1956, seven thousand; 1957, ten thousand; 1958, two thousand.

Q. Jay Freeman and Company?

A. No purchases.

Q. Omega Food Products?

A. Are those on the new, most recent list?

Q. Yes.

A. There is just a couple we have on there.

952 Q. What are—

A. Alma, Great China, Beechnut and Fred Mushroom.

Q. Will you give us the information for those?

A. Great China, branded item, 1951 through 1956, one to two thousand dollars per year; 1957 through 1958, four thousand dollars per year. Beechnut, branded item; 1957, $75,000 per year; 1958, $97,000 per year. No purchases prior thereto, '57. Fred Mushroom, branded item, 1956, $1,200; 1957, $1,200; and 1958, $200.

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Q. Will you give the records for American Home Foods and Aurora Frozen Foods?

A. The American Home Foods, that is a branded item in retail and institution. 1951, thirty thousand; 1952, thirty-two thousand; 1953, estimated thirty-four thousand; 1954, estimated thirty-six thousand; 1955, thirty-eight thousand; 1956, sixty-three thousand; 1957, seventy-three thousand; and in 1958, ninety-two thousand.

Aurora Frozen Foods, 1951 through 1955, $150, approxi-

953 mately per year; 1956, $500; 1957, estimated around seventeen hundred; and in 1958, approximately $1,500.

Q. I take it, then, you made no sales during the period—strike that. I take it, then, you made no purchases during the period 1951 to the present from any of the fol-

lowing companies? Jay Freeman and Company, Omega Food Products, Maycliff Sales, McLean Frozen Pies, Gino Corporation, Henderson's Portion Pack, National Brands, Dixie Lily Milling Company, Nelson Brokerage Company, Elbeck Milling Company, American Frigid Company, Capitol Food Company, Veveo Foods, Terry Foods, Morgan Packing Company, Midwest Food Packers, Gibbs and Company, Manischewitz Food Products, Croyden House Foods, Blue Point Division of General Foods, LaFayette Packing Company, Leigh Food Products, Hunt Foods of California and Ohio; Manning, Inc.; Jacksonville Milling Company; Barra Frozen Foods; Tone Bros.; Mother's Foods; Boullo Food Products, The Hoger Corporation, or Wagner Bros?

A. There is one correction, sir. Gibbs and Company we have not made any purchases in the past two years approximately. But prior thereto, '56 on back, we had been purchasing a branded merchandise of pork and beans and their Gibbs catsup.

Q. In what amounts, sir?

A. I would estimate it between ten to fifteen thousand dollars per year, approximately.

Q. For each of the years, 1951 through '55?

A. Through '56.

954 Q. With the exception of Gibbs and Company on that long list of names I read, you made no purchases from any of those companies during the 1951 to present period?

A. That is correct.

Q. Approximately how many retail stores do you sell to?

A. Well, that is hard to determine with the mortality rate today of retail stores. Today I would say approximately—I would not say there were any more than a thousand stores all together, retail stores. Now, if you have

reference to the self-service food centers, that is not included in that figure.

Q. That is a retail food store?

A. It is a retail outlet, but we do not classify it as a retail store, in the sense it is a self-service park.

Q. Including those, how many retail outlets do you sell your products to, approximately?

A. Approximately it would be about—I would say the voluntary group will average about 65 to 70, and in addition thereto we serve a good many institutions, and they would average about 500. Is, well, approximately 600 altogether, safe estimate.

Mr. Hays: Thank you. That is all.

Cross Examination

By Mr. Walker:

Q. I would like to go into a little more detail, please, 955 Mr. Despaux, to the types of people or stores, or groups, or whatever they are that you sell. You testified that you sell to retail food stores, is that right?

A. That is correct.

Q. Do you also sell to institutions?

A. That is correct.

Q. What types of institutions are these, sir?

A. Various types of institutions. They are schools, they are commissaries that operate in the different industrial plants, as well as department stores. There are commissaries that operate in certain number of Government agencies. There are camps that we sell, particularly during this time of the year which are all classified in the group of the institution.

Q. You also make some sales to the Government, is that right?

A. We make sales to the Government.

Q. You mentioned self-service food centers, Mr. Despaux. What are those?

A. Well, of course, the self-service food center are a little different from what we term the ma and pop store where the husband and wife would work at the store and sort of open all day and take care of the trade, corner grocery store. Today the self-service food centers are stores that—well, they service multiple people within the area, serving a large number of people on a large-scale
956 selling plan. In other words, their sales will run approximately, I would say from 50, 60, 70 thousand dollars per week.

Q. These are super markets?

A. That is correct.

Q. Do you service any voluntary groups, Mr. Despaux?

A. Yes, we do.

Q. Do you service a group called Eddy's Super Market?

A. Yes, we do.

Q. When did you first start selling to Eddy's Super Market?

A. Well, we acquired Eddy's Super Market approximately, I would say about six years ago.

Q. That would be in about 1953?

A. Approximately.

Q. By acquisition, you do not mean you bought the stores?

A. No, we did not buy the stores. They are individually group operated.

Q. All you do is service them?

A. That is right. We are their chief source of supply.

Q. Mr. Despaux, these stores that you just mentioned, about what portion of your total sales are accounted for by Eddy's Super Market?

A. Oh, well, that particular group, I would say average between 33 and 35 per cent of our total volume.

Q. So that your sales increased very greatly in 1953 when you started servicing Eddy's Super Market?

957 A. That is right.

Q. Consequently your purchases also increased greatly?

A. That is right.

Q. Does Eddy's Super Market have its own private label brand, sir?

A. They have a number of items were they carry their own private label.

Q. These are not Monarch labels?

A. They are not Monarch, that is correct.

Q. These products that are packed under Eddy's Super Market private labels, these are supplied by your unit. Is that right?

A. That is right.

Q. Do you purchase your needs of these private label products, that is Eddy's private labels through the central buying office of Consolidated at all?

A. No.

Q. You are not required to use at all the approved list of suppliers that is put out by the central buying office for your purchases of Eddy's private labels. Is that right?

A. That is correct.

Q. To the best of your knowledge, did you purchase products from American Home Foods prior to 1951, Mr. Despaux?

A. To the best of my knowledge, the information that I received, yes, I would say yes.

958 Q. Are those advertised products, sir?

A. Yes, they are.

Q. What is the brand name?

A. Well, it is advertised Boy-Ar-Dee spaghetti products and macaroni products. I can't specifically state the trade name of these particular products.

Q. Chef Boy-Ar-Dee is the principal brand?

A. Principal brand. Yes.

Q. Did you purchase products from Armour prior to 1951?

A. Yes, we did.

Q. Are the products you purchase from Armour advertised locally, sir?

A. Yes, they are.

Q. Did you purchase from Custom Foods prior to 1951, Mr. Despaux?

A. Yes, we did.

Q. Did you purchase from Gerbers prior to 1951?

A. Yes, we did.

Q. Are those products advertised locally?

A. Yes, they are.

Q. Did you purchase products from Grocery Store Products prior to 1951?

A. Yes, we did.

Q. Have those products been purchased through a local broker, sir?

A. Yes, they are.

959 Q. Are those products advertised locally?

A. Yes, they are.

Q. Do those products include Kitchen Bouquet?

A. Kitchen Bouquet, mushrooms, cream of rice.

Q. What products do you purchase from George Hormel and Company?

A. Canned lunchmeats and canned meat products.

Q. Under what brand, sir?

A. That is your Spam and Dinty Moore, I think, are the names on that.

Q. Are those products advertised locally?

A. Yes, sir.

Q. Did you purchase from Hormel prior to 1951?

A. Yes, we did.

Q. Did you purchase from Jewett and Sherman prior to 1951?

A. Yes, we did.

Q. Did you purchase from Lake Odessa Canning Company prior to 1951?

A. Yes, we did.

Q. Did you purchase those products through a broker?

A. Broker.

Q. Are those advertised products?

A. Yes, they are.

Q. Did you purchase from the Lipton Company prior to 1951?

A. Yes, we did.

960 Q. Are those advertised products?

A. Yes, they are.

Q. Did you purchase from Oscar Mayer and Company prior to 1951?

A. Yes, we did.

Q. Were those products purchased through a broker?

A. Yes, they are.

Q. Are those advertised products?

A. Yes, they are.

Q. Did you purchase products from Recipe Foods prior to 1951?

A. Yes, we did.

Q. Are those products both private label and advertised products, sir?

A. That is correct.

Q. Did you purchase from P. J. Ritter Company prior to 1951?

A. Yes, we did.

Q. Have you purchased those products through a broker?

A. Yes, we did.

Q. Are those advertised products?

A. Yes, they are.

Q. Did you purchase from Rival Packing Company prior to 1951?

A. Rival Dog Food, yes, we did.

Q. Are those products purchased through a broker?

961 A. Yes, they are.

Q. Are those advertised products

A. They are.

Q. What type of products did you purchase from Wass Food Products?

A. Wass Food Products, we purchase pickles from them.

Q. Have you purchased any barbecue sauce from them?

A. No, not to my knowledge.

Q. Did you purchase from F. M. Wilson Canning Company prior to 1951?

A. Yes, we did.

Q. I believe you testified, Mr. Despaux, that your purchases from the Woolson Spice Company have been at a level of a few hundred dollars per year. Where do you get your spices, sir?

A. We have within our own town there a right large organization who are manufacturers of spices of various kinds. I have reference to— may I mention the name?

Q. Yes, please do.

A. I have reference to the McCormick Company who have been supplying our spices for a number of years. They are the— one of the chief sources of supply for a number of the voluntary group.

Q. Are the products you buy from Wyler and Company advertised products, sir?

A. Wyler and Company, yes, that is an advertised product.

962 Q. A couple of minor points, Mr. Despaux, to make sure the record is clear. In a number of instances when you were giving the answers to Mr. Hays' question about volume figures, you inadvertently used the word selling. In all those cases you meant to use the word, "purchases."

A. Yes, that is right.

Q. Those figures you gave were all estimates?

A. That is correct.

Q. What has been the over all trend between 1951 and 1958 in your sale of private label products, sir?

A. The over all trend, I would say there hasn't been any drastic change in the private label. They have been running about the same.

Q. In a number of instances, Mr. Despaux, in the cases of these individual companies that Mr. Hays asked you about, you testified to figures that showed increases in your purchases. In general, in your opinion, what accounts for those increases in the case of your company?

A. Well, those particular increases is primarily because of the increase in the retail volume or the retail level. This, in turn I assume, had the increase in consumer demand. But our particular increase was through the increase in the retail level.

Q. Some of the increase in some instances is due to your, in the year 1953, your taking on Eddy's Super 963 Market and servicing them?

A. That is correct, yes.

Q. Approximately what percentage of your buying is through the central buying office or the West Coast buying office of Consolidated, sir?

A. Oh, approximately— I am going to have to estimate this figure, sir. I will say between five and six per cent roughly, offhand.

Q. What was the approximate total dollar volume of your purchases in 1958, Mr. Despaux?

A. Approximately $13,000,000.

Q. What has been the over all trend of the purchases by your Division since 1950?

A. There has been definitely a trend turned upwards.

Q. What has been the trend of your purchases for most of your suppliers since about 1950?

A. Well, that, in turn, would show a trend upwards.

Q. What, in your opinion, is the reason for these trends, sir? Is that the reasons you testified to?

A. The trend is definitely the increased volume of business that we have been obtaining through the voluntary group and other outlets.

Q. Has your institutional business increased over the years, sir?

A. Yes, sir.

964 Q. What has been the trend in your purchases of advertised products over the period of years from 1950 to 1958, Mr. Despaux?

A. The advertised products?

Q. Yes, sir.

A. Well, the trend there has been increased, purchase-wise.

Mr. Walker: No further questions.

Redirect Examination

By Mr. Hays:

Q. If your trend in private label sales has remained about the same, I believe you testified to that, and your trend in advertised products has increased, where did that increase come from?

A. Of course, now with your super markets we do not have control over the promoting their private brands, while we try to put it in our catalog which is in there with the other national brands. The trend today with the retailer is, he is consciouswise of the national brands, and I assume he becomes consciouswise of the national brands because of the demand by Mrs. Housewife of wanting the national brand, seeing it advertised some place. That is an assumption, but I can't—.

Q. I do not need your assumption about that. I mean, when you say your sales of private label goods have re-

mained about the same, do you mean dollarwise or percentagewise?

A. Dollarwise, approximately.

965 Q. And your sales of advertised products have gone up dollarwise?

A. Yes, sir.

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V. R. VAN NATTA was thereupon called as a witness for the Commission and, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hays:

Q. Will you state your name and spell it, sir?

A. V. R. Van Natta, V-a-n N-a-t-t-a.

Q. What is your address, sir?

A. Home address?

Q. Yes, sir.

A. 1301 Garden Street, Park Ridge.

Q. Illinois?

A. Illinois.

Q. Where are you employed, sir?

A. 2199 West Street, River Grove.

Q. What is your position there?

A. President of Monarch Foods, Canners and Processors.

Q. How long have you held that position?

966 A. Since last November.

Q. What position did you hold prior to that time?

A. Executive Vice-President of the same company.

Q. For how long did you hold that position?

A. Since 1957.

Q. What was your position prior to that time?

A. President of the Monarch Finer Foods Division of Consolidated Foods Corporation.

Q. Is the present company or corporation a successor to the Division?

A. Yes, with the separation of certain canning plants.

Q. How long did you hold the position with the Monarch Foods Canners and Processors Division?

* * *

By Mr. Hays:

Q. Let me start over again. You are President of the Monarch Foods Canners and Processors Division of Consolidated Foods Corporation?

A. Yes, sir.

Q. You held that position for one year?

A. Since last November.

967 Q. Before that you were Vice-President?

A. Executive Vice-President of the same company.

Q. How long did you hold that position?

A. Since 1957.

Q. Prior to 1957 what position did you hold?

A. I was the President of the Monarch Finer Foods Division of Consolidated Foods Corporation.

Q. How long did you hold that position?

A. Since 1954.

Q. Prior to 1954 what were you?

A. I was Branch Manager of the Minneapolis branch of Monarch Finer Foods Division of Consolidated Foods Corporation.

Q. How long did you hold that position?

A. Since 1951.

Q. How long have you been with the company?

A. Since 1935.

Q. Describe the operation of the Monarch Foods Canners and Processors Division as it now operates.

A. We are sellers of Monarch and other corporation owned brands to chain stores, independent grocery stores and to institutional foods serving accounts.

Q. Do you do any processing at all?

A. Yes. We process coffee.

Q. Is that all?

A. That is all.

968 Q. The rest of these brands you buy prepared by other packers?

A. Or by corporation owned plants.

Q. Or corporation owned plants?

A. Right.

Q. What are the corporation owned plants that you buy products from or receive products from?

A. Columbia Foods.

Q. What type of products are those?

A. Vegetables. Do you want me to name them specifically?

Q. Yes, canned vegetables.

A. You want me to name them by product?

Q. Yes.

A. Canned green beans, onions, beets, carrots, cherries, peas, corn, mixed vegetables, pickles of all kinds. canned fruits, West Coast products, canned vegetables, dressings.

Q. What do you mean by dressings, salad dressings?

A. Salad dressings. I think that about covers it.

Q. Is that the bulk?

A. That is the bulk of it.

Q. Those products are processed and packed by that Division or part of Consolidated Foods?

A. A part of Consolidated Foods, yes, sir.

Q. Do you purchase from any other processing part of Consolidated Foods or subsidiary of Consolidated
969 Foods, or do you receive goods or products from any other processing operation or subsidiary of Consolidated Foods?

A. Coastal Foods.

Q. What products do you receive from Coastal Foods?

A. Certain canned vegetables.

Q. Any other products?

A. To the best of my knowledge I have named them.

Q. Do you receive products from any other subsidiaries or divisions of Consolidated Foods?

A. I believe not.

Q. Where do you sell and—

Mr. Owen: Can we go off the record a moment, please?

* * *

Mr. Hays: Read the last question.

(Question read.)

The Witness: We receive some from the Gentry Division. I mentioned Coastal Foods. I believe that covers it.

By Mr. Hays:

Q. What products do you receive from the Gentry Division?

A. Very small quantities of garlic powder, onion powder, and a few canned peppers, pimentos.

Q. What products do you receive from the United
970 States Products Company?

A. Many varieties of canned fruits and some vegetables.

Q. In what areas do you sell the products you receive, that you purchase, that is, from suppliers or receive from these divisions or subsidiaries of Consolidated Foods?

A. Thirty-one states, New England, and running down into New York and New Jersey, from Somerville, Massachusetts, out of Jacksonville, Florida, into Florida, Georgia, North and South Carolina, Alabama and over the line slightly into Mississippi, a little bit in southern Tennessee; out of Houston, Texas to the State of Texas, New Mexico, southern Arkansas, Louisiana; out of Minneapolis in the entire State of Minnesota, western Wisconsin, northern Iowa, North and South Dakota, Montana, and out of Los Angeles and San Francisco, in California, Washington, Oregon, Idaho, Utah, New Mexico, Arizona, Alaska. I believe that is it.

Q. These products in the area that you have just described are sold I take it through the distributing organizations of Consolidated Foods. Is that right?

A. We are a distributing organization of Consolidated Foods.

Q. It is through your organization that they are sold?

A. That is right.

Q. You sell how, through brokers?

A. We sell some through brokers and some through salesmen.

Q. They are also sold to your various wholesale operations?

971 A. No, sir.

Q. You do not sell any—

A. We sell to chains. We do not sell to any company or corporation owned wholesalers. We do sell to some other wholesalers, but not corporation owned, and to institutional firms.

Q. Where do the corporation owned wholesalers get their Monarch brand foods from?

A. I would say directly from the corporation owned canneries and so forth, and through the buying organization.

Q. To whom do you sell, you sell retail stores?

A. We sell to retail stores, and we sell to institutional food service accounts.

Q. What brands are these products sold under? What are the names of the brands?

A. Very largely Monarch, Sociate Club, some Farm House, and other minor, very minor brands.

Q. That is a description of the Monarch Foods Canners and Processor Division as it exists today?

A. Yes, sir.

Q. Of course, there have been some changes in that operation going back to the year 1951 have there not?

A. Right.

Q. Will you describe any changes that occurred and when they occurred.

972 A. Well the changes are not actually in the physical properties or business of the branches who are still Monarch Foods Canners and Processors. Those have remained the same. For the period 1957 to '58, we were merged with some of the canning and manufacturing plants. In 1958 they were separated again. So far as sales or operations of the present division's units, they have not changed since 1951.

Q. In other words, between 1951 and 1957, your division had canning operations attached to it?

A. Not during that period.

Q. Does it now?

A. No, sir.

Q. When did it have those canning operations?

A. For one year, 1957 to 1958.

Q. I see. Before 1957 it was similar organizationwise that it is today?

A. That is right.

Q. In other words, between 1951 and 1956, it had a similar selling organization. '57 it had canning operations hooked on to its selling operation, and '58 and '59 the canning operations were divorced. Is that correct?

A. Yes.

Q. Are you familiar with the suppliers of products to your division?

A. I have a reasonable knowledge of that, yes, sir.

973 Q. When I name a company, if you made no purchases from that company, state no. That is, during the periods 1951 to the present. If you did make purchases from that company, will you state whether they were pri-

vate label purchases or branded products, and state the dollar sales for each of the years 1951 to the present. I take it you hardly purchase anything but Monarch brands. Is that right?

A. Very largely.

Q. All right. Wyler and Company?

A. No purchases.

Q. Custom Foods?

A. Custom Foods, yes. From 1941 to 1952 we averaged purchases of approximately two thousand to twenty-five hundred per year.

Q. I am asking 1951.

A. 1951?

Q. To date.

A. 1951 and 1952, approximately two thousand to twenty-five hundred for each of those years; 1953, approximately $3,000; 1954, approximately $10,000; 1953, approximately $13,000; 1956, about fifty-five hundred; 1957, about one thousand; and no purchases in 1958. Those were all Monarch brand or our own brands.

Q. Wass Food Products?

A. Yes. That again is our own Monarch brand for 974 the year from '51 through '53 the purchases were less than $500; in 1954, about eight hundred; 1955, about two thousand; 1956, about eight hundred; 1957, approximately thirty-eight hundred; and 1958, approximately thirty-five hundred.

Q. Armour and Company?

A. No purchases.

Q. Michigan Mushroom Company?

A. I am sorry on Armour and Company, we have since 1956 purchased about two thousand dollars per year. No purchases prior to that time.

Q. Michigan Mushroom Company?

A. In 1951 approximately $1,800; in 1952, approximate-

ly $1,800; '53, about $3,000; '54, about $8,000; '55, about $5,500; 1956, about $4,000; 1957, approximately $1,500; and 1958, approximately $1,000.

Q. Indiana Mushroom Corporation?

A. No purchases.

Q. Gerber Baby Foods?

A. No purchases.

Q. Lake Odessa Canning Company?

A. No purchases.

Q. Oscar Mayer and Company?

A. No purchases.

Q. Milwaukee Spice Mills?

A. No purchases.

975 Q. Jewett and Sherman?

A. Yes. These are for our own labels. The figures are approximately: 1951, $65,000; 1952, $65,000; 1953, $75,000; 1954, $70,000; 1955, $100,000; 1956, $127,000; 1957, ninety-five thousand and 1958, eighty-two thousand.

Q. Lipton Tea Company?

A. Purchases in 1957 and in this particular case it is their label $300; and in 1958, $900.

Q. George A. Hormel and Company?

A. No purchases.

Q. Bedford Products?

A. Yes. Again these are all Monarch or our own label. 1951, approximately $20,000; 1952, approximately $20,000; 1953, about $50,000; 1954, about $60,000; 1955, $60,000; 1956, about $60,000; 1957, about $35,000; and 1958, approximately $12,000.

Q. Les Pommiers Cannery?

A. Yes. Very small purchases since 1951, an average of about $2,000 to $2,500 per year.

Q. Bluepoints Company?

A. Yes. That, too, the purchases have not varied too

much throughout the years, about $6,000 per year since 1951 through 1958.

Q. J. J. Gielow and Sons?

A. Yes. This again is private label, our label, Monarch. 1951 and 1952, approximately $50,000 each year; 1953, $40,000; $1954, $45,000; 1955, fifty-five thousand; '56, 976 seventy-five thousand; '57, fifty-five thousand; and 1958, eighteen thousand.

Q. Recipe Foods?

A. No purchases.

Q. J. L. Read Foods?

A. Yes. This again is private label. 1951, approximately $35,000; 1952, $45,000; 1953, $75,000; 1954, $80,000; 1955, $85,000; 1956, $30,000; 1957, $10,000; 1958, $5,000, all approximate.

Q. Grocery Store Products?

A. One item only is purchased from Grocery Store Products and that is their label Kitchen Bouquet, and the purchases are very small about $1,000 a year since 1951 through 1958 and steady.

Q. P. J. Ritter Company?

A. Small purchases, yes. Again Monarch label, purchases began in 1956 when it was a new item at that time, and they have run approximately $2,500 per year each year since then.

Q. Woolson Spice Company?

A. We started purchasing from them in 1956 and the average purchases are about $15,000 a year.

Q. Joseph De Frates Company?

A. No purchases.

Q. Moore and Company?

A. One purchase in 1951, $180.

Q. Rival Packing Company?

977 A. No purchases.

Q. Blue Seal Foods?

A. No purchases.

Q. F. M. Wilson Canning Company?

A. Yes. They have been a long time supplier, since 1951, in the year 1951 about $85,000; 1952, $90,000; 1953, about $125,000; 1954, one hundred sixty-five thousand; 1955, about $200,000; 1956, about $140,000; 1957, $130,000; and 1958, approximately one hundred sixty thousand.

Q. Alma Canning Company?

A. Purchases, they are an old time supplier. I do not have the figures. I would estimate they would run from six to seven thousand dollars per year steady.

Q. Jay Freeman and Company?

A. No purchases.

Q. Omega Food Products?

A. No purchases.

Q. Mayclin Sales?

A. No purchases.

Q. McLean Frozen Pies?

A. No.

Q. Gino Corporation?

A. No.

Q. Henderson's Portion Pack?

A. No.

978 Q. National Brands?

A. No.

Q. Dixie Lily Milling Company?

A. No.

Q. Nelson Brokerage Company?

A. No.

Q. Elbeck Milling Company?

A. No.

Q. American Frigid Company?

A. No.

Q. Capitol Food Company?

A. No.

Q. Great China Food Products?

A. Yes, they are one of our authorized suppliers of Chinese foods, one of several. I would estimate that our purchases since 1951 might average between three and four thousand dollars per year and steady.

Q. Aurora Frozen Foods?

A. Yes. They have been a supplier of one item, mushroom steak sauce since, oh, 1950 or earlier, and the average purchases from them will run steady at between three and four thousand dollars per year.

Q. Vevco Foods?

A. No.

Q. Terry Foods?

979 A. No.

Q. Morgan Packing Company?

A. Yes. I do not have figures on Morgan. I would estimate that for our company the purchases have been fairly steady throughout the years at between five and six thousand dollars.

Q. Midwest Food Packers?

A. No.

Q. Gibbs and Company?

A. Yes. They were suppliers of vegetables for probably two years, starting in either '55 or '56. I am not sure which. It was probably '55 and '56. They supplied a few vegetable items. I would estimate six to eight thousand dollars per year.

Q. Manischewitz Food Products?

A. No.

Q. American Home Foods?

A. Yes. American Home Foods have been suppliers of several items to our organization, all under Monarch or our own label. They are an old-time supplier. The sales will average from seven to eight thousand dollars per year.

There is some variation because some of these items are also shipped from River Grove to our units in merchandise cars. But the purchases are steady.

Q. The figures you have given are figures for the purchases of your division and not the River Grove purchases, are they?

980 A. The figures I am giving you did not include the River Grove.

Q. Beechnut Packing Company?

A. No.

Q. Croyden House Foods?

A. No.

Q. Bluepoints Division of General Foods?

A. Oh, they are suppliers of our own label of some clam and clam chowder items.

Q. Mr. Walker: May I interrupt. I think there is some confusion. This is not the Bluepoints Company you have already testified about.

The Witness: I am sorry.

By Mr. Hays:

Q. The company I am asking about is the Bluepoints Division of General Foods Corporation.

A. No.

Q. LaFayette Packing Company?

A. No.

Q. Leigh Food Products?

A. No.

Q. Fred Mushroom Products?

A. No.

Q. Hunt Foods?

A. No.

981 Q. Manning, Inc.?

A. No.

Q. Jacksonville Milling Company?

A. No.

Q. Barra Frozen Foods?

A. No.

Q. Tone Bros.?

A. No.

Q. Mother's Foods?

A. No.

Q. Boullo Food Products?

A. No.

Q. The Hoger Corporation?

A. No.

Q. Wagner Bros.?

Q. Have you ever heard of Cardinal Stores?

A. Yes.

Q. Where are they located in the Consolidated corporate set up?

A. They are a part of the Consolidated Foods Distribution Division, located— headquartered in River Grove.

Q. With headquarters in River Grove?

A. Right.

Q. Do they do any purchasing of their own?

982 A. Of their own, I believe not.

Q. May I ask if that is included?

A. I am not sure.

Mr. Walker: The Cardinal Stores are not owned by Consolidated Foods Corporation.

Mr. Hays: They are not owned?

Mr. Walker: They are a voluntary group that are serviced like these other voluntary groups that have been testified to out of the River Grove distribution center, and the figures that Mr. Lerner has already given you included the products sold to the Cardinal Stores along with the other voluntary groups.

The Witness: But they do not preclude the possibilities of Cardinal Stores. I am afraid of making a misstatement,

of Cardinal Stores as such, who are individually owned buying anything they want from any one.

Mr. Hays: Thank you. That is all I have.

Cross Examination

By Mr. Walker:

Q. Mr. Van Natta, would you name the branches of Monarch Food Canners and Processors, please?

A. Monarch Foods Canners and Processors at Somerville, Massachusetts; Jacksonville, Florida; Houston, Texas; Minneapolis, Minnesota; Los Angeles, California; and San Francisco, California.

983 Q. As I understand it, each of these branches is a distribution center. Is that correct?

A. That is right.

Q. These are not what is known as full line houses. Is that right?

A. They are not.

Q. Would you explain why they are not full line houses?

A. We are the sellers and distributors of Monarch and other corporation brands to chain stores, to independent retail grocers and institutional accounts. We do not have any affiliation with any voluntary group. We are purely and simply sellers and distributors of Monarch.

Q. As you mentioned earlier in your testimony, there are a few minor items that are not private label that are sold by some of your units, your branches?

A. Right.

Q. Would you explain what those sales are, please?

A. Yes. We carry certain, shall I say, convenience items, for the use of institutional accounts. By convenience items we might carry a little flour, a little sugar, and such items that are needed by institutional accounts that we are servicing as close to 100 per cent as possible, and it is purely a simply a service for that sort of business.

Q. About what would you estimate is the percentage of your total business that is devoted to private label?

984 A. At this time?

Q. Yes, sir.

A. From 88 to 94 per cent private label.

Q. Would you please explain, Mr. Van Natta, the purchasing procedure; that is, will you start at the need for goods by one of your branches and explain how the purchasing is done as a matter of mechanics?

A. The branch Manager maintains his stock record books, writes his requisitions, and they go one of several ways: They will either come through my office to the River Grove purchasing department and will be executed there, or they will go to the West Coast purchasing office with a copy or confirmation over my desk, or the branch Manager may buy private label, Monarch brands or other corporation brands, from established and authorized suppliers directly in which case a confirmation goes over my desk.

Q. These branches may buy private label items from the authorized list of suppliers without clearing it first with your office?

A. Right.

Q. You mentioned in the course of your direct examination, Mr. Van Natta, in one instance, I believe, items that were supplied to the branches direct by the River Grove office in small quantities. What types of items are these, sir?

A. The item of Kitchen Bouquet would be one,
985 which is a small item. Items that are not—the turnover is not sufficient to warrant direct purchases because of high freight rates on small quantities and for that reason there are quite a number of such items that are many times put in merchandise cars from River Grove to the given unit and, of course, at the carload rate of freight,

which makes the delivered cost to the unit lower than if they had bought LTL from the original supplier.

Q. You testified, Mr. Van Natta, to the percentage of your total purchases that are private label at the present time. What were they in the years prior to 1957?

A. Ninety-five to ninety-seven per cent private label.

Q. Did any of your units purchase from American Home Foods prior to 1951, sir?

A. Yes.

Q. Have any of your units purchased from Aurora Frozen Foods prior to 1951?

A. I am not sure that company was even in existence as such prior to 1951.

Q. In your testimony about purchases from Bedford Products, Inc., Mr. Van Natta, the figures you gave indicated a number of fluctuations in amounts. Would you, please, explain, those fluctuations in your purchases from Bedford Products?

A. Bedford Products supply us with jellies and preserves largely. They are one of several authorized suppliers for Monarch label. In previous years, they were
986 more of a major supplier than now, for, oh, shall I say, for the reason that possibly competition was not quite so keen and we could afford to ship goods from the Bedford plant in Dunkirk, New York, to all of our units. In the last few years, and I would say this would be probably since 1955 or so, the competitive condition is very much more critical, and the need for economies are such so our Purchasing Department has made analysis and quality control tests and have approved local suppliers for jellies and preserves in several of our branches and nearby to a branch area.

Q. And the result of that has been, sir?

A. The results of that has been that since probably 1955 or 1956, the purchases from Bedford have gone down and additional purchases have been made from local suppliers.

Q. By your individual units?

A. By the individual units with the approval of the quality control and central purchasing office.

Q. So it is perfectly clear, what are the reasons that appropriate those units that you mentioned to change to that local supplier?

A. To give them a lower lading cost and therefore be more competitive.

Q. Did any of your units purchase from Bedford prior to 1951?

A. They are a long old-time supplier.

987. Q. Did any of your units purchase from the Blue-points Company prior to 1951?

A. Yes.

Q. Did any of your units purchase from Custom Foods prior to 1951?

A. Yes, sir.

Q. I believe that the figures you gave, Mr. Van Natta, show some decrease in your purchases in recent years. What in your opinion is the explanation for that decrease?

A. Is this from Custom Foods?

Q. Yes, sir.

A. Custom Foods supply us largely with soup bases. They are a dehydrated soup to which water is added. At one time they were our sole supplier for Monarch brand. We have since found other suppliers who will give us equal quality, equal service, everything else equal and lower price and so we have discontinued Custom Foods for that reason as a supplier.

Q. Did any of your units purchase from Gielow prior to 1951?

A. Yes, for many years, in fact, we set them up as a supplier with our own quality control people.

Q. How do you mean; would you explain that, please?

A. Yes. Our Monarch brand, it is very important we

maintain a very high quality. We have had a pickle manufacturing plant at West Chicago, Illinois for many
988 years. These particular pickles that were supplied by Gielow come from a fresh pack and they may only be produced when the cucumbers are ripening on the vine. The Gielow Pickle Company had a plant in Adel, Georgia, and we sent our quality control people down there to set up our formula for them to supply us pickles from the southern plant. And, incidentally, also, from another plant that they have up in northern Michigan. So, as a result, our purchases from Gielow went up quite largely during some of the years in question. But about 1956, I believe, it might be '55, it might be early '57. I think it is either '56 or '55 because the cucumbers were not— had two or three bad years in the south, Gielow discontinued their Adel, Georgia plant. As a result we have had to produce more of those pickles in our own West Chicago plant and in Gielow's northern plant.

Q. Did any of your units purchase products from Grocery Store Products prior to 1951?

A. Yes, sir.

Q. Did any of your units purchase products from Jewett and Sherman prior to 1951?

A. Yes, sir.

Q. What is the explanation in your opinion, Mr. Van Natta, for the fluctuations in your purchases from Jewett and Sherman that you have testified to in your direct examination?

A. Jewett and Sherman have been a supplier to us
989 of olives and of salad dressings— would be the major items for many years. They have plants fairly well located to some of our units, not so well to others. We purchased, I believe the figures were, the highest in 1956, $127,000, and it was in that year that our own dressing plant was established in Grundy Center, Iowa. We devel-

oped our own formulas and as a result the purchases from Jewett and Sherman, particularly on dressings, went down rather drastically.

Q. Did any of your units purchase from Les Pommiers prior to 1951, sir?

A. Yes.

Q. You mentioned, I believe, one or two small purchases from the Lipton Company, Mr. Van Natta. Do you have any knowledge as to what the circumstances were surrounding those purchases?

A. I do.

Q. What were they?

A. These are purchases of Lipton's institutional size tea bags by our San Francisco branch, $300 in 1957; $900 in 1958, purchased at the request of one hospital and one specific steamship line, a convenience item.

Q. Did any of your units purchase products from Michigan Mushroom Company prior to 1951?

A. Yes, sir.

990 Q. You testified to, I believe— I am sorry, let me ask you, Mr. Van Natta, so I am sure there is no confusion here. Did you testify to any purchases from Moore and Company?

A. One small purchase in 1951 or 1952.

Q. Do you know the circumstances surrounding that purchase?

A. I do.

Q. What is that?

A. One of the large hotels in southern Florida requested we purchase their particular brand of green turtle soup, again as a convenience item.

Q. Have any of your units purchased from J. L. Read Foods prior to 1951?

A. Yes.

Q. I believe the figures that you gave show some fairly large purchases in about 1953, Mr. Van Natta. Can you explain those increases?

A. 1953, they came out with a very fine potato salad. For a couple years the sales were very high.

Q. You testified to purchases from P. J. Ritter Company in very recent years. Do you know the circumstances surrounding those purchases, sir?

A. I do.

Q. What are they?

A. They developed a glass pack of very fancy asparagus in 1956, which we purchased for our Monarch label.

Q. Which of your units purchased those, sir?

991 A. Somerville, Massachusetts, and Jacksonville, Florida, only.

Q. Where is P. J. Ritter Company located, sir?

A. In Pennsylvania, I believe. I do not know the exact town.

Q. Did the location have anything to do with these two units purchasing from Ritter?

A. Partially, but the— another reason that these two branches serve some very fancy trade requiring that type of merchandise.

Q. Did any of your units purchase from Wass prior to 1951?

A. Yes.

Q. What kind of products are purchased from Wass?

A. Monarch brand of barbecue sauce.

Q. The figures you gave on your purchases from the F. M. Wilson Canning Company, showed considerable fluctuations.

A. Right.

Q. Will you please explain the reasons for those fluctuations?

A. Yes. F. M. Wilson are one of the quality canners of

fruits and vegetables on the West Coast, and the variation would be due to availability, quality, price, crop conditions; in other words, they are only one of many suppliers of fruits and vegetables to use in California. These various factors that I have named determine whether or not we buy from them or someone else.

992 Q. Mr. Van Natta, most of the companies that have been mentioned here are private label suppliers of yours, and the figures you have given indicate fluctuations throughout a number of these companies. Over all from all of your private label suppliers, what accounts for the fluctuations in purchases?

A. I don't think that we can take any one supplier. I hope I am answering what you are asking. I don't think we can take any one supplier and by a fluctuation with that particular supplier, indicate the trend of those items in our business.

Q. Let me rephrase the question, Mr. Van Natta. Do you switch back and forth among suppliers?

A. We do.

Q. And your purchases from any one supplier may vary from year to year?

A. Correct.

Q. What are the reasons that cause this shifting back and forth and this fluctuation from year to year?

A. Quality of products, availability of products, service and price, and included in the price might be some particular promotions or extra sales effort by a supplier.

Q. You testified that some of your units purchased from Woolson Spice Company. These products are spices. Is that right, sir?

993 A. Right.

Q. Do all of your units buy Monarch spices from Woolson Spice Company?

A. All of them buy Monarch spices from Woolson Spice

Company, but they do not buy all of their Monarch spices from Woolson Spice Company.

Q. They use some other suppliers?

A. In some of our units, Monarch spices are also supplied by local suppliers, particularly in the institutional spice sizes.

Q. What types of products did you purchase from Alma Canning Company, sir?

A. Canned vegetable.

Q. Were those private label?

A. They are.

Q. Did your units purchase from Alma prior to 1951?

A. Yes. They are a supplier of many years.

Q. Were the products purchased from Great China Food Products private label products?

A. Yes.

Q. Did your units purchase from them prior to 1951?

A. Yes.

Q. Did your units purchase from Morgan Packing Company prior to 1951?

A. Yes, sir.

994 Q. What is the approximate total dollar volume of your purchases in 1958, Mr. Van Natta?

A. 1958, approximately twelve and a quarter million dollars.

Q. What has been the trend of those purchases since 1950 over all?

A. Slightly on the increase.

Q. What has been the over all trend of your purchases from most of your suppliers?

A. Again, slightly on the increase.

Q. What in your opinion are the reasons for this trend?

A. A reasonable upward trend of sales.

Q. Brought about by what, sir?

A. Aggressive se" ,g methods, a switch to supplying more chain units, and increase in institutional sales.

Q. Mr. Van Natta, to your knowledge is Custom Foods still an authorized source of private label supplies for Monarch products?

A. I believe they are.

Q. They are still contained on this list of authorized buyers, then?

A. I believe so.

Q. To your knowledge, what is the primary criteria used in putting names on this list of suppliers, sir?

Mr. Hays: Objection. There is no foundation laid here to show that Mr. Van Natta has anything to do with
995 the preparation of this list of qualified suppliers. Consequently, Mr. Walker's question can not be properly answered. It is out of order.

• • •

996 Mr. Walker: I think he has something to do with making up the list.

Hearing Examiner Kolb: Find that out. I will sustain the objection to the question as put.

By Mr. Walker:

Q. Do you have personal knowledge, Mr. Van Natta, as to how the approved list of suppliers is made up?

A. In many instances, yes.

Q. How have you acquired that knowledge?

A. In my years in the office and in the branches, and my duties as merchandiser as well as selling officer of the company, many of the items that go on the approved listing as a result of a panel examination of the product in our quality control laboratories, usually blend testing panels.

I recall one item in particular where we made, I think
997 it was seven separate testings of the product before

Mr. Lerner and his staff approved for this list, and the same situation has been true in many other cases.

Q. Did you personally participate in those procedures, sir?

A. I did.

Q. Have you ever made suggestions or recommendations concerning companies to be placed on the approved list of authorized suppliers?

A. I have.

Q. Based upon this knowledge which you have acquired and about which you have testified, what is the primary criteria by which companies are judged in deciding whether they shall be placed upon the approved list of suppliers?

Mr. Hays: Same objection, because there is no showing that Mr. Van Natta here has anything to do with the actual decision involved. These preliminary questions deal with recommendations he has made, and I believe a limited number of tests he has observed before a panel. Now, there is no showing that he has anything to do with the decision as to who or who is not on that list. Consequently, I submit there is no foundation laid for that question.

Hearing Examiner Kolb: Objection will be overruled.

By Mr. Walker:

Q. You may answer, sir.

998 A. Will you repeat that question.

Q. Mr. Walker: Would you read it, please.

(The reporter read the question as follows:

"Question: Based upon your knowledge which you have acquired and about which you have testified, what is the primary criteria by which companies are judged in deciding whether they shall be placed upon the approved list of suppliers?")

The Witness: Number one requirement would be quality, and I have seen many and studied many of the laboratories' reports regarding these products.

By Mr. Walker:

Q. Mr. Van Natta, once you or the branches under your control receive this list of authorized suppliers, as I understand your prior testimony, you are free to choose from among those companies in selecting your supplier of private label products?

A. That is right.

Q. In many instances more than one company will be listed as a supplier of an individual item?

A. That is right.

Q. What criteria do you consider in deciding among the various companies which one you will order from, which one or ones you will order from?

A. Again, there might be a slight variation in qual-
999 ity which would at this point only be slight, but the main thing would be availability to our units and the laid in cost of the product in our units and that would vary according to the freight from the supplier to our unit.

Q. Would you explain, please, what you mean by laid in cost?

A. Most merchandise is bought from suppliers FOB their plant, private label merchandise. Freight rates vary, and the lading cost means the cost of the merchandise FOB the supplier's plant, plus the freight to our unit.

Q. By unit you refer to each of these branches about which you have testified?

A. Right.

Q. So that the lading price is a combination of the quoted price for the product and the freight to the particular branch?

A. Correct.

Hearing Examiner Kolb: To make it simple, the delivered price; is that not it?

Mr. Walker: That is it, sir, in one word.

By Mr. Walker:

Q. Making reference to the delivered price, Mr. Van Natta, are you implying that the only price variations among the suppliers will be in the area of freight, or will there also be variations in the price of the product itself that will influence your decision?

1000 A. There may also be a variation in the price of the product itself.

• • •

1002 Chicago, Illinois
June 17, 1959

1004 PROCEEDINGS

Hearing Examiner Kolb: The hearing will come to order. Mr. Van Natta, will you resume the stand, please?

V. R. VAN NATTA was thereupon called as a witness for the Commission and, having been previously duly sworn, resumed the stand, was examined and testified as follows:

Redirect Examination

By Mr. Hays:

Q. You understand that you are still under oath, sir?

A. Yes, sir.

Q. In response to Mr. Walker's questioning yesterday, you made reference to a certain purchase of food products by, I believe, the various branches, is that correct?

A. Yes.

Q. Now, in the figures of purchases that you gave yesterday, did you include the purchases of those branches?

A. Yes, sir.

Q. You did say—

A. Uh huh.

Q. —that was all the purchases of all the branches—

A. I—.

Q. —under you?

A. I—approximately twelve and a quarter million dollars.

Q. Now, for purchases of various suppliers, such as Custom Foods and Lowes Food Products—I am re-
1005 ferring to the purchase figures you gave for those individual companies where purchases were made—did you include the purchases made by your branches of those specific suppliers?

A. Yes, sir.

Q. Now, yesterday, with references to the approved supplier list, do you recall your testimony in connection with that approved supplier list?

A. Not exactly.

Q. Who are the individuals that determine which firms go on that list?

A. The head of our Purchasing Department.

Q. Who is he, sir?

A. Mr. Lerner and his staff in Chicago.

Q. Do you know the names of the people on his staff that make that determination?

A. Are you talking about private labeled merchandise?

Q. No, sir. I am talking about all suppliers on the approved supplier list.

A. I'm more familiar with the private label suppliers than I am with the national brand, naturally, because of the very large majority of our business that is private label; but I think I could come close to naming all of the individuals involved.

Q. All right. Are there two different groups for national brands—one for national brands and one for the Monarch brands?

1006 A. I believe in most instances that the national brands buyers are different than the Monarch brands buyers.

Q. But are there two groups of individuals that approve buyers? That is, one group of individuals that approves buyers from Monarch label and another group of individuals that approve buyers for national brands?

A. Insofar as the company brands are concerned, there is a group. I can only assume that insofar as the national brands are concerned, that it might include Mr. Lerner as head of the department; his buyers who buy national brands and the merchandising people at the River Grove and in the outside operations.

Q. Now, —,

Mr. Walker: Your Honor, May I interrupt here and move to strike the last portion of the answer, not that it is an objection to what Mr. Van Natta has said, but it is by his own answer speculation and an assumption; and if Mr. Hays wants to bring these facts out, the man is present in the courtroom who knows the answer. I think it would be better to have the facts rather than speculation by this witness on the record on this subject.

• • •

1007 Hearing Examiner Kolb: I will let the answer stand and deny the motion to strike.

By Mr. Hays:

Q. I take it, then, you do not have any personal knowledge of which individuals make the determination as to the names of the suppliers that appear on this approved supplier list with reference to national advertised brands or advertised brands?

Mr. Walker: Excuse me. I must object, your Honor, because the confusion here is that the question contains an assumption; that there is no evidence in the record as to—

1008 there is no evidence in this record that there is an approved list or any approval so far as nationally advertised brands are concerned; and when Mr. Hays asks the question, "who are the people who make up this

list," it is an improper question because there is no evidence that there is such a list or any such approval.

* * *

Hearing Examiner Kolb. The objection will be sustained.

By Mr. Hays:

Q. I take it, then, your testimony yesterday, with reference to an approved supplier list, dealt only with an approved supplier list for Monarch brand products?

A. Monarch brand and the other brands that I mentioned, such as, Yacht Club, Farm House; and so far, I have no knowledge of any other list.

Q. Now, who are the individuals that determine
1009 whether or not a supplier will be placed on that approved list?

A. Are you talking about our brand of merchandise now?

Q. Yes.

A. The start of an item, the origin of an item might come either from the central purchasing office—.

Q. I am asking who the individuals are, sir. That is all I am asking.

A. All right. It would be Mr. Lerner, his staff of buyers, our Quality Control people.

Q. Who are they?

A. Our Quality Control Laboratory in River Grove.

Q. What is the name of the individual?

A. Mr. Pasco, our Merchandising people in River Grove.

Q. Who is the individual and head?

A. Mr. Casey.

Q. Who?

A. Mr. Casey.

Q. C-a-s-e-y?

A. That's right, myself as head of the branches, and the branch managers themselves in some cases.

Q. In other words, you have sat in and made a determination as to whether or not a supplier will be on the approved supplier list?

A. As to whether or not we want that item under our label.

Q. Have you ever participated in the decision that 1010 it would go on the approved supplier list?

A. Yes.

Q. When?

A. Many times.

Q. During what period?

A. Practically since 1940.

Q. Since 1940, and did you meet with Mr. Lerner and Mr. Pasco and Mr. Casey and make the decision, all sitting down at once?

A. That's right.

Mr. Walker: Is this question intended to cover every single instance?

Mr. Hays: Yes.

Mr. Walker: Does the witness understand?

The Witness: I did not understand that, no, sir.

By Mr. Hays:

Q. Well, is there an exception to—?

A. There are.

Q. What were those exceptions?

A. We operate on a majority rule; and if, for example, I were out of town, the rule of the balance of the people would stand.

Hearing Examiner Kolb: While we are on that, Mr. Hays, I believe Mr. Van Natta yesterday stated that determination was made by a committee. Did you say that?

1011 The Witness: I would call it a committee. It is not established and so named.

Hearing Examiner Kolb: Then, at that time, were you a member of the committee so far as the determination was concerned?

The Witness: I've been a member of the Merchandising Committee for many years.

Hearing Examiner Kolb: And that is the one that determines the list?

The Witness: In most cases.

By Mr. Hays:

Q. In some cases, that committee does not determine who goes on the list?

A. There could conceivably be cases where Mr. Lerners buyers and the Quality Control Department would make a final decision.

Q. Now, yesterday, I believe, you mentioned a situation where seven tests were made before a buyer was placed on the approved list?

A. That's right.

Q. What was the product and the company involved?

A. Jellotine Desserts, Universal Foods Company.

Q. And when did that situation occur?

A. Over a period of a number of months within the last two, two and a half years.

Q. And ultimately, that company was placed on the 1012 approved buyer list?

A. As one of the approved buyers.

Q. Yes. Now, am I correct in my understanding that the approved buyers' names are placed on a printed list?

A. That's right.

Q. And circulated throughout your division?

A. Yes.

Q. And how often, if ever, is this list revised?

A. It's revised when price changes come about and it's revised when suppliers are dropped or added.

Q. Now, as a practical matter, how often has that occurred since 1951?

A. I would say that some changes would be almost weekly.

Q. And would that include the changes insofar as the specific approved companies were concerned?

A. It could.

Q. Those changes are promptly disseminated after the decision has been made?

A. I believe so.

Q. On that approved buyer list are there more than one supplier for similar products?

A. Yes.

Q. Is that generally true, that there is more than one supplier for each type of product appearing on that list?

A. I believe in most cases that is true.

1013 Q. Now, did I understand your testimony yesterday that you are familiar with the various formulas of the products which you purchase?

A. Formulas, no, sir.

Q. Are you familiar with the physical makeup of the products involved?

A. I think I would like an interpretation of that question.

Q. Well, I have reference—.

A. Possibly an example.

Q. If I am correct, now, I believe yesterday you stated that you were familiar with laboratory tests of the products involved?

A. I told you that I look at many laboratory reports on items.

Q. And what do those laboratory reports deal with?

A. Matters in regard to quality, particularly, fill of package, percentage of solids, appearance, flavor.

Q. Do they deal with the ingredients of the products tested?

A. What do you mean by "ingredients?"

Q. The type of ingredients that go into making the product.

A. In most cases, no.

Q. They do not?

A. (Shaking head)

Mr. Hays: That is all I have, your Honor.

Hearing Examiner Kolb: Any recross?

1014 *Recross Examination*

By Mr. Walker:

Q. To your knowledge, Mr. Van Natta,—. Well, let me ask you this question first so as to clear up any possible confusion that may be in the record. This list that you have been testifying about is called, I believe, an approved supplier list, isn't that the way you customarily refer to it?

A. I should like that.

Q. And not an approved buyers' list?

A. Right.

Q. Mr. Van Natta, to your knowledge, has any supplier ever been added to this list because he was a customer of Gentry or left off this list because he was not a customer of Gentry?

Mr. Hays: Objection, your Honor. That question exceeds the scope of the direct, the cross, and the redirect.

Hearing Examiner Kolb: I think he ought to answer about the makeup of the list, which makes the question proper. Objection overruled.

The Witness: Will you read the question?

Hearing Examiner: Read the question.

(The reporter read the question as follows:

"Question: Mr. Van Natta, to your knowledge, has any supplier ever been added to this list because he was a customer of Gentry or left off this list because he was not a customer of Gentry?")

1015 The Witness: No, sir.

By Mr. Walker:

Q. In recent years, Mr. Van Natta, about how many companies are included in this list of approved suppliers?

A. I would estimate between 150 and 200.

Q. Is the name of every company that is an approved supplier contained in this, actually appear in this book?

A. Taking the question literally, I would say no; but most of them probably might be.

Q. There are some companies where the reference in the back is just to geographical area and the companies' names actually do not appear in the back, isn't that correct?

A. That is true.

• • •

Q. As to these companies, the names of these com-
1016 panies are kept in the central buying office. They are still approved suppliers, but because of the number of them they are not actually put in the back, isn't that right?

A. That is true, and the reason for that might be that peas, for example, would be quoted f.o.b., which is shipping point, which might include three, four, five different suppliers.

Hearing Examiner Kolb: Well, if you wanted—if anyone with your division wanted to buy from a supplier in this area, what would they have to do?

The Witness: They would have to make sure they were approved, even though they were not on the list.

Hearing Examiner Kolb: They would have to see the central office to make—see if they were on the list?

The Witness: Yes, sir.

By Mr. Walker:

Q. How many suppliers—strike that, please. In recent years and in the course of a year, a single year, Mr. Van Natta, about how many private label suppliers does Consolidated deal with?

A. I would estimate between three and four hundred.

Q. The brands you mentioned in response to Mr. Hays' question, Yacht Club and a couple of others, those are all Consolidated private brands, is that right?

A. Yes, sir.

Q. And so that the record is perfectly clear, to the best of your knowledge, the only approved supplier list that is in existence, so far as Consolidated is concerned, is an approved supplier list for private label products, is that right?

1017

A. That's right.

Q. Just so there is no confusion in the record, Mr. Van Natta, you mentioned some names of people who were involved in these decisions as to private label suppliers; the personnel, the actual people involved in this process have changed over the years, have they not?

A. Yes, sir.

Mr. Walker: No further questions.

Further Redirect Examination

By Mr. Hays:

Q. What were those changes, Mr. Van Natta, in personnel?

A. Buyers come and go.

Q. The people that make the decision, the change in the people that make the decision, sir?

A. Might be a case where a buyer for a given set of items might resign or for other reasons leave the company and be replaced by someone else.

Q. All right. Now, what have those changes been—the names of the people—since 1951?

A. Oh, since 1951, there have been many changes.

Q. Well, sir, will you name the people that were on the Committee immediately—strike that, please. Will you name the people that were on the Committee in 1951?

1018

A. In '51 the buying was largely done by department heads of the Monarch Finer Foods Division.

Q. I am speaking of this Committee you have been talking about. Was it in existence in 1951?

A. I am sure that each department man and the merchandisers considered items before—and the Quality Control Laboratory before they were placed on an approved list. I am not sure that such approved list was in existence in 1951.

Q. But there was a committee that determined who the approved suppliers were, is that correct?

A. Yes, in substance.

Q. You were one of those persons in 1951, were you not?

A. Yes.

Q. And who were the other persons in 1951 that made the decision as to the companies that were approved by—approved suppliers?

A. I believe in 1951 a man by the name of Flynn was one of the gentlemen. The department heads varied. We had a man by the name of Hofatra Herning. I'm not sure whether Mr. Jongleaux was there in 1951 or not, Mr. Wojeck, Mr. Heintz. In 1951 I was in charge of Sales; and as a result of that, was a member of the Discussion Committee. I am not sure who our president was at that time,

but I feel certain that he conceivably would pass on
1019 most items. The basic decision rested on the quality,
on the salability.

Mr. Hays: I would like to strike that last portion, which is not responsive to the question, with reference to salability and quality. May that be stricken, your Honor?

Hearing Examiner Kolb: That may be stricken. I believe the reporter wants some spellings in there, don't you?

Mr. Walker: Could we get the names correct so we do not have to correct the record later. Take the names one at a time that you are in doubt about and let's get the correct spelling.

The Witness: Jongleaux, J-o-n-g-l-e-a-u-x; Hofatra, H-o-f-a-t-r-a; Wojcik, W-o-j-c-i-k. There was one I did not include and that would be Mr. Walker.

By Mr. Hays:

Q. Now, who were those individuals in 1952? Would there be any changes in 1952 that would shorten—?

A. Mr. Hofatra did and I'm not sure about the year. Mr. Walker was there, I am sure. I believe Mr. Heintz was there, Mr. Wojcik was there, Mr. Jongleaux left the company, but I don't know in what year.

Q. Who was the president in 1952?

A. Mr. Frank Walker.

Q. Any changes in 1953?

A. I believe a change did come in either—I think it was in 1953 that Mr. Max Horning was made president of the Division.

1020 Q. Any other changes?

A. I don't remember.

Q. How about 1954?

A. 1954. I came in as president in May of 1954. I am not sure about the exact year that our Purchasing Department was set up. It may have been 1952. By "Purchasing Department," I mean our present Purchasing Department, which included Mr. Lerner and a staff of buyers.

Q. Whenever that department was set up, he became a member of the Committee; that is, Mr. Lerner, is that right?

A. Yes.

Q. Any other changes in 1954?

A. Oh, some place along the line, I don't know whether it was 1954 or not, a Mr. Alan Cummings was added to the Purchasing Department.

Q. Was he related to Mr. Nathan Cummings?

A. That's right.

Q. What was that relationship?

A. Son. When the Purchasing Department was set up, many of the present buyers were—some of the present buyers were incorporated in that department.

Q. Any other changes since that time?

A. Yes, Mr. Kohut came into the Buying Department when the department was set up. Mr. Heintz left the company. I do not know what year. Mr. Wolf left the
1021 company. I do not know what year. Mr. Pects was added and Mr. Wetzell was added.

Q. Is that all?

A. I don't know.

Q. That is all you remember?

A. That's all I remember.

Q. Did Mr. Perlitz ever take any part in those decisions during that time, 1951 to the present?

A. Conceivably he might, I do not know.

Q. Mr. Kennedy—Sylvester Kennedy—did he take any part in those decisions?

A. Not to my knowledge.

Q. Was the Committee responsible to Mr. Kennedy?

A. I think you would have to ask Mr. Lerner who he was responsible to.

Q. Mr. Kennedy was the president of the company at that time, was he not?

A. Of Consolidated Foods Corporation.

Q. That is all?

A. Wetzell, W-e-t-z-e-l-l; Pects, P-e-c-t-s. Now, I recall a couple of more additions. A Mr. Schmidt, S-c-h-m-i-d-t. I believe that's all. No, a Mr.—. No, I don't believe that's the Label end. I'm not sure. Wolf, W-o-l-f.

Mr. Hays: That is all I have, your Honor.

Further Recross Examination

By Mr. Walker:

1022 Q. Mr. Van Natta, when Mr. Alan Cummings was

associated with the company in the capacity at the time that you mentioned, what was his actual job? He was a buyer, wasn't he?

A. He was a buyer, yes, but I'm not sure. I thought you meant of the actual items, and that I'm not certain of.

Q. That was the next question. I was going to ask you do you know what items he was buying at that time?

A. I don't remember.

Q. Do you know when he was there?

A. I believe he came in—sometime between 1952 and '54, but I'm not sure when because I was in Minneapolis at that time.

Q. And when did he leave?

A. I believe it was 1954.

Q. And his participation in this selection process would be limited to those products for which he was a buyer, is that right?

A. Yes.

• • •

AL LERNER was thereupon called as a witness for the Commission and, having been previously duly sworn, 1023 was examined and testified as follows:

Redirect Examination

By Mr. Hays:

Q. Do you understand you are still under oath?

A. Yes.

Q. You yourself testified about certain purchases that you were responsible for or knew about during the period 1951 to the present, is that correct?

A. Yes.

Q. Since you left the stand, in that testimony we have heard from certain witnesses regarding the purchases of those various parts of Consolidated Foods during the period 1951 to the present: Klein's Super Markets; Lee Foods

Division; Monarch Foods, Canners, and Processers; Monarch Finer Foods Division at Baltimore; Monarch Finer Foods Division at Columbus; the Dannemiller Grocery Division; Monarch Finer Foods in Cumberland, Maryland; Monarch Finer Foods in Roanoke, Virginia; the Piggly Wiggly Midwest Company; and the Western Grocery Company; and during the period 1951 to the present, were those all of the subsidiaries or divisions of Consolidated Foods that made purchases of food products?

A. Well, you understand that I've been in this office only since 1953.

Q. Since 1953. Then,—.

A. Some of those companies were not part of Consolidated.

1024 Q. Were there any other companies that were a part of Consolidated but there has been no testimony; that is, it is not covered by the divisions I have named, or the companies I have named.

A. No, I don't believe so, other than, possibly, some branch that might have been closed.

Q. In other words, since 1953, to your knowledge, all of the purchasing divisions of Consolidated Foods have been covered in their purchases, is that correct?

• • •

By Mr. Hays:

Q. As I understand it, then, the testimony with reference to these various divisions does not include purchases of products used in manufacture, is that correct?

A. That is right.

Q. In other words, the testimony is confined to processed products?

A. Well, items that are bought for retail buyer distributing units.

Q. And other than that exception and the exception of your overseas sales, this is a complete coverage of the items

1025 that were purchased or the division purchases of products bought for resale?

A. Well, I can't say that that's complete because I have no knowledge of many of the items that are bought by these outside divisions or units.

Q. But you have knowledge of the divisions themselves, is that correct?

A. I have knowledge of the divisions.

Q. And these divisions are the only divisions that purchase products for resale, is that correct?

A. Yes.

Mr. Hays: That is all I have.

Mr. Walker: Do you wish to cover the international division purchases?

By Mr. Hays:

Q. Are you familiar with the international division purchases?

A. In a general way, yes.

Q. What is the International?

A. They sell for export to only foreign countries.

Mr. Hays: That is all I have.

Mr. Walker: Well, I think the record should be clear on this.

Recross Examination

By Mr. Walker:

Q. Mr. Lerner, does the international division pur-
1026 chase from any of those companies that Mr. Hays asked you about your purchases of?

A. Yes, they purchase from some of those companies.

* * *

Q. Mr. Lerner, what percentages of the purchases throughout Consolidated of products for resale, in your opinion, go through the Chicago buying office and the West Coast buying office?

A. I would estimate less than 10 per cent.

Q. And what is the approximate total dollar volume of River Grove's purchases in 1958, and by "River Grove," I mean the unit that you testified about your purchases for on your direct examination earlier.

A. We would buy for the River Grove unit in 1958?

Q. Yes, sir.

A. I would say forty to forty-five million dollars.

Q. And what has the trend of these purchases been since 1950?

1027 A. I would say upward.

Q. What has been the trend between 1951 and 1958 in wholesale prices of the products of the food products handled by Consolidated?

A. We would by for the River Grove unit in 1958?

Q. And do you have an opinion as to what the percentage increase would have been year by year between 1951 and 1958?

A. I would say that prices have increased in the last ten years about two to three per cent per year.

Mr. Walker: Your Honor, I would like to ask this question of the witness, realizing it may be susceptible to objection, and I want to tell you in advance that I wish to ask it because the question was raised with Mr. Van Natta by Mr. Hays and an inference has been left in the record that could not be dealt with with Mr. Van Natta because he was ignorant of the subject matter, and I would like, therefore, to ask this question of Mr. Lerner to make sure that we have the correct information in the record and I will pose the question:

By Mr. Walker:

Q. What, Mr. Lerner, are the products that Mr. Alan Cummings was a buyer for when he was a buyer for Consolidated?

A. Alan Cummings purchased macaroni products,

candy, sugar, chicken products. I believe that was the bulk of his group of items.

1028 Q. And are any of the companies that Mr. Hays asked you about your purchases from on your direct examination, do any of those companies handle those products that you have just mentioned?

A. Well, macaroni products are handled by Grocery Store Products, but I know that we have never made any private label purchases from them: No candy; no sugar. College Inn handles chicken products. To the best of my recollection, that's all the items in the companies.

Mr. Walker: No further questions.

Mr. Hays: That is all I have, your Honor, of this witness.

Hearing Examiner Kolb: There is one thing—Just a minute—I would like to get straightened out. As I understand it, when you are talking about these purchases, purchases for manufacture is not involved?

The Witness: Purchases for manufacturing?

Hearing Examiner Kolb: Yes.

The Witness: That is right.

Hearing Examiner Kolb: And you are only talking about purchases, say, principally, canned merchandise which would be labeled Monarch or some other private brand by Consolidated, am I right?

The Witness: You're talking about our office?

Hearing Examiner Kolb: Yes.

1029 The Witness: Well, we could purchase almost anything for the River Grove operation that could be canned, bottled bulk.

Hearing Examiner Kolb: I am just taking an example, canned—say, for instance, Michigan Can. We do not know whether the company is in existence. Suppose they put out tomatoes, something of that sort, you would buy that already canned and put on it Monarch or whatever label?

The Witness: That is right.

Mr. Walker: So, it is clear, your Honor—. You also purchase for the River Grove operation the advertised brands; that is, not non-private label?

The Witness: Yes, everything for the River Grove operation.

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1029 - 1044 [Commission Exhibits 222, 223 and 224 were received in evidence.]

• • •

1044 Mr. Walker: Let me state, then, a stipulation, please. Now, your Honor, we wish to offer in evidence a group of documents that were obtained from the files of Basic Vegetable Products, Inc., with the following stipulation with counsel supporting the complaint; that these documents were sent and received by the persons as indicated thereon; that these documents came from the files of Basic Vegetable Products; that insofar as the truth of the matter stated therein is concerned, these documents shall be received in evidence to the same extent that those documents were received in evidence which were placed in evidence through Mr. Sparling.

Is that the correct stipulation, sir?

Mr. Hays: Yes.

• • •

1044 - 1051 [Respondent's Exhibits 1 through 115 were received in evidence.]

• • •

1053 Mr. Walker: • • • I move to strike Commission's Exhibit 169.

• • •

1056 Hearing Examiner Kolb: • • • I will strike the document that is Commission's Exhibit 169.

• • •

1059 Hearing Examiner Kolb: Well, on your statement that the stipulation is more important, I withdraw your motion to strike. I will say, however, that I consider this document very highly speculative hearsay.

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1061 Washington, D. C.
August 10, 1959

1062 - 1068 PROCEEDINGS

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[Additions to Commission Exhibit 223 were offered and received in evidence. Commission Exhibits 3 and 5 were withdrawn, having been replaced by Commission Exhibit 224. A correction was made to Commission Exhibits 222 and 223. Additions to Commission Exhibit 224 were offered and received in evidence.]

• • •

1069 (Whereupon, the documents referred to were marked Respondent's Exhibits 116, 117-A and -B, 118-A and -B, 119-A and -B, and 120 for identification.)

Mr. Horne: (one of the attorneys for respondent) I move that these exhibits be received in evidence.

Mr. Hays: I agree that they may be received in evidence in accordance with the terms of the stipulation made with reference to Respondent's Exhibits 1 through 115 which have heretofore been received in evidence.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibits 116 through 120.

(Whereupon, the documents, heretofore marked Respondent's Exhibits 116, 117-A and -B, 118-A and -B, 119-A and -B, and 120 for identification, were received in evidence.)

Hearing Examiner Kolb: Now, do you want to put your stipulation in evidence?

Mr. Hays: Yes, your Honor.

It is stipulated and agreed by and between counsel for respondent and counsel supporting the complaint that if

Mr. Robert J. Sparling were called to testify, he would testify as follows:

Approximately four or five years ago we adapted the following policy for contracts.

1070 1. A buyer could purchase a definite poundage of onion and garlic to be shipped during a specified period—the purchase represented by a contract. At the expiration date of the contract any unshipped poundage remaining on the contract was to be shipped to the buyer.

2. A buyer who purchased all of his requirements from Basic—this was considered to be 85 percent to 100 percent of his total needs—could purchase on what we called a total requirements contract. This contract specified a definite poundage. However, if the buyer did not give us shipping instructions for the total amount shown on the contract, we did not ship the undelivered balance on the expiration date of the contract.

This policy was canceled after a few months, as according to buyers our competition were offering less binding contracts, we had no way of determining whether a buyer was purchasing 85 percent to 100 percent of his requirements from us and due to crop failure, market conditions, most buyers refused to specify definite amounts.

After the above policy was canceled we continued issuing contracts using the phraseology "total requirements contract." However, these words have no significance and the buyers have no obligation to purchase 85 percent to 100 percent of their requirements of onion and garlic from Basic.

• • •

1071 - 1076 [Respondent's Exhibits 121-122 were offered and received in evidence under the terms of the same stipulation entered into with reference to Respondent's Exhibits 1 through 120.]

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1077 New York, New York
August 22, 1960

1078 PROCEEDINGS

* * *

1097 LOUIS EDWARDS was called as a witness on behalf of the respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name?

A. Louis Edwards.

Q. Where do you live, Mr. Edwards?

A. At 44 North Spring Garden Avenue, Nutley 10, New Jersey.

Q. What is your occupation, Mr. Edwards?

A. I am the purchasing agent for the food division of Thomas J. Lipton, Inc., Hoboken, New Jersey.

Q. As purchasing agent, do you have charge of purchasing any particular commodities?

A. I am principally concerned with the purchase of raw materials for our food and salad dressing divisions.

1098 Q. How long have you held the position of purchasing agent?

A. I would say since about 1943.

Q. Where are Lipton's general offices located?

A. Hoboken, New Jersey.

Q. And the address?

A. At 1300 Hudson Street.

Q. Would you please describe the business in which Lipton is engaged?

A. Lipton is in the business of tea, dehydrated soups and salad dressing, the manufacture and distribution thereof.

Q. Was the food division known by another name some time ago, Mr. Edwards?

A. Yes, in the early days of the company it was known as Continental Foods, Inc. and as such retained that identity for, I would say, about four or five years after we acquired it.

Q. Has the food division ever packed any ketchup?

A. Yes, we have.

Q. During what period of time was that?

A. From 1942 through 1958.

Q. Where are Lipton's plants located, Mr. Edwards?

A. We have tea plants in Hoboken, New Jersey; Suffolk, Virginia; Galveston, Texas; San Francisco, California; Streator, Illinois. We have food plants in Albion, New York and Kansas City, Missouri. We also have
1099 food operation and tea operation in Canada, if you are interested in that, too: Toronto Tea, Montreal Food.

Q. What products are processed at the Kansas City plant?

A. Salad dressings.

Q. To whom are Lipton's products sold, Mr. Edwards?

A. To wholesale grocers and chains.

Q. Are the products sold in any particular section of the country or nation-wide?

A. Nation-wide.

Q. Under whose labels are Lipton's products sold?

A. Lipton.

Q. What is the label that the salad dressings are sold under?

A. Wishbone, but the name Lipton appears as the manufacturer.

Q. And the tea, of course, is sold under the Lipton name?

A. Yes, sir.

Q. Through what channels are your products sold?

A. Wholesale grocers and chain stores.

Q. How do you get to these wholesale grocers and chain stores? What means do you use to reach them?

A. We have 300 to 350 salesmen calling on them all the time.

Q. What products has Lipton sold to Consolidated Foods Corporation and its various units?

A. So far as I know, the entire line, at least since I have been with the company.

Q. Over what period of time has Lipton sold these 1100 products to Consolidated?

A. Ever since I have been with the company.

Q. How large has been the volume of Lipton's sales to Consolidated in recent years?

A. I don't know precisely. I would think between a half million and 700,000. I may be wrong a little bit.

Q. Is that per year?

A. Yes, sir.

Q. And that is in recent years, is that right, Mr. Edwards?

A. Well, regrettably, Mr. Walker, our retention period on records only dates back two years. I believe—I briefly chatted with our sales people as to the years 1958 and 1959. That may be wrong by a little bit.

Q. But during this same period of time, how large were Lipton's sales to all of its customers?

A. In 1959, our total volume, including Canada, was about $110 million.

Q. What has been the trend of your sales since 1950?

A. Up.

Q. And what, in your opinion, have been the reasons for that trend, Mr. Edwards?

A. Aggressive merchandising, both at point of sale and advertising, television. We have a large advertising budget. We have a lot of salesmen. We have increased our sales force continually throughout the entire period.

1101 Q. Which of Lipton's products use dehydrated onion and garlic?

A. Our entire line of dehydrated soups and our entire line of salad dressings.

Q. Did you use dehydrated onion and garlic in the ketchup when it was packed by Lipton's?

A. Yes.

Q. Since 1946, who has made the decisions as to which source of supply to use for dehydrated onion and garlic?

A. I have.

Q. And from what companies have you purchased dehydrated onion and garlic?

A. Basic Vegetable Products, Inc. and the C. B. Gentry Company, Inc. That is a division of Consolidated.

• • •

1110 Mr. Walker: Your Honor, I would like to indicate one other thing with relation to these exhibits that will be coming in from time to time. All will be the same. The blanks universally indicate no purchases. The blanks never indicate no data. Wherever there is an absence of data, the words "no data" will appear. Wherever there was a blank in any of these forms, it will mean that Gentry did not sell anything or Basic did not sell anything to that company in that year. For example, on this one, in 1947, Gentry sold no onion to Lipton.

Mr. Reporter, will you mark this, please, as Respondent's Exhibit 123 for identification.

• • •

1113 Q. Looking at Respondent's Exhibit 123, Mr. Edwards, why did Lipton's purchase very little dehy-
1114 drated onion from Gentry prior to 1950 but began to purchase heavily from Gentry after that time?

A. Well, Basic was our original supplier of onions and garlic. We only had soups prior to 1950. We only used one

type of onion. That is the onion powder on your Honor's desk and the garlic powder. In 1951 we launched an onion soup which called for very large tonnages of onions. I believe that answers your question.

Q. That explains why you had a greater need for dehydrated onion, Mr. Edwards, but it does not explain why you purchased increasing amounts from Gentry in the year 1950. Why specifically did you increase your purchases from Gentry in the year 1950?

A. Well, it became apparent, Mr. Walker—I will rephrase it this way. No prudent purchasing agent wants to have one source of supply. It was apparent that the volume that we would have would call for a good solid second source of supply. That is the reason why we began to introduce Gentry in a more substantial way.

Q. I wonder if you would expand on that a little. Would you explain why it is important to your business, as you said, to have a second source of supply?

A. Well, the dehydrating business deals with heat. If a man's plant burned down, I would be out on the end
1115 of a limb looking for suppliers. If he had a strike, in the case of war, and so forth, it is just good sound business to have a second source of supply if your tonnage is big enough.

Q. Looking again at the exhibit, Mr. Edwards, it appears that during the years 1951 and 1952, you were buying most of your onion and garlic requirements from Basic. Why was that?

A. Basic was our first supplier and I guess our biggest loyalty was to Basic. But when it became apparent we were going to need more sources of supply, we began to bring in Gentry in a substantial way.

Q. Why specifically, tying it down to the years, did your purchases from Gentry increase so substantially between

1952 and 1953, when they went up from roughly 154,000 to roughly 446,000 pounds?

A. Increased demand by reason of the onion soup and then we introduced other soups that called for onion products, so our tonnage just went up. Back up there a little bit, Mr. Walker. In 1950 we had the Korean War. If you recall, anyone who went through World War II was burned very badly on sources of supply, so it was darn good judgment to have second sources of supply, so that by 1953 our needs had gone up enough so that we were able to begin to taper off with Basic and divide the business, as it were.

Q. Do you remember when Lipton first introduced its onion soup?

1116 A. I think it was in 1952. I would certainly think so by reason of these big figures here. I think the nationwide launch was in the latter part of 1951. The nationwide was 1952.

Q. Mr. Edwards, according to this exhibit, you purchased practically all of your requirements of dehydrated onion and garlic from Basic in the year 1954. Gentry got very little busin ss that year. How does that square with this policy that you have described of giving Gentry more and more of the business to bring them up to the Basic level?

A. Well, as I mentioned, Mr. Walker, our nationwide launch was 1952, but our sales department's eyes were a little larger than their stomach and we came a cropper on onion soup in 1953. Basic, if I remember, had made pretty heavy crop commitments for the 1954 crop. We had no such obligation with Gentry, so out of fairness and honor we took most of our supplies in 1954 from Basic.

Q. This exhibit shows, also, Mr. Edwards, that since 1955, your purchases from Gentry have increased very substantially. Aside from this two source of supply factor which you mentioned, what other factors are there, if any,

that account for those increased purchases from Gentry in the years 1956 to 1959?

A. If I recall correctly, Gentry had a new type of dehydration which appealed to me very much. It is known as Procter and Schwartz drying. Basic did not have it.

1117 They had what is known as the tunnel-type drying, a convection type drying over wood trays. They did go into plastic trays. But it occurred to me that this Procter and Schwartz, after being documented with a careful examination from having our technical people do it—and I went out to the Gentry plant in 1955 or 1956—I have forgotten which—and looked at this operation. It looked good to me, so I elected to buy more onions from Gentry. That was one of the motivating reasons. Let me say that prior to that time Gentry's type of dehydration was somewhat similar to Basic. We had a lot of complaints from our trade on splinters in the onions. A wood splinter and a dehydrated onion chip look very much alike. They are very hard to detect. At our insistence, Basic installed a plastic type tray, which eliminated to a great extent the splinter problem, but the Procter and Schwartz type of drying has almost a complete absence of wood splinters and foreign material. That was probably one of the big reasons why I wanted to give Gentry more business. Then our business was growing. We needed more onions.

Q. What happened in the sales of your onion soup in these years, 1955 to 1959?

A. It has grown and grown and grown. It has grown up considerably. Well, the figures indicate that. It is almost two and a half times as great at it was when we began.

Q. In the years 1958 and 1959, did Lipton take on

1118 any additional products that it had not handled before that caused increased needs for dehydrated onion and garlic?

A. Yes. We acquired the Wishbone Company in Kansas

City. That was liquid salad dressings and very large quantities of dehydrated garlic and nominal quantities of dehydrated onion are used in those products.

Q. Lipton has a laboratory, doesn't it?

A. Yes.

Q. What part does that laboratory play in your choice of sources of supply for ingredients in your products?

A. The laboratory cooperates with the suppliers in the drawing up of our specifications; that is, the size of the pieces, the moisture content, the quality standards, and they constantly work back and forth with the supplier for the improvement of the product.

Q. And what role does the laboratory play in connection with your decisions as to sources of supply?

A. After the specifications are drawn, it is up to me to buy the material at the best place I can, at the best price I can get it, that will come within the quality specification that they have set up.

Q. Does the laboratory check incoming shipments of dehydrated onion and garlic?

A. Yes.

Q. For what?

1119 A. For specification compliance.

Q. I have already explained to the Hearing Examiner that we have talked before today about this case. Before that time, had you ever talked with anyone about the relationship of any kind between Lipton's sales to Consolidated and your purchases of onion and garlic?

A. No.

Q. Did you have any kind of a communication on that subject?

A. No.

Q. In buying onion and garlic from Gentry, Mr. Edwards, what consideration have you given to the fact that Consolidated was a customer of Lipton's?

A. Very little, Mr. Walker. I knew that the company was doing business with Consolidated, but it didn't make too much difference to me.

Q. In your opinion, Mr. Edwards, would you have purchased any less from Gentry if it had not been a part of Consolidated since 1951?

A. I don't think I would.

* * *

1120 *Cross Examination*

By Mr. Hays:

Q. How long have you been in charge of purchases for the Thomas J. Lipton Company?

A. Since 1943.

Q. Who is you superior?

A. Mr. L. J. Purcell.

Q. How long has he been your superior?

A. Since 1943.

Q. And what is his title?

A. He is the director of purchases.

Q. How does his work differ from yours?

A. He is my superior.

Q. What does he have to do with purchases?

A. Mr. Purcell has authority over all purchases, raw materials and packing supplies. To me is delegated the responsibility for the purchases for the food division, which includes raw materials.

Q. Since 1943, have you had any discussion with the sales department of the Thomas J. Lipton Company?

1121 A. Mr. Hays, we eat in a big private dining room, all of our executive group. To say have I had any discussion with our sales people, if I said no, I would be telling an untruth. We talk all the time about business and so forth.

Q. Not only in this dining room but elsewhere?

A. Certainly, I talk about the business with all of the people in our company, and others, too, Mr. Hays.

Q. During this period—1943 to the present—who has been in charge of the sales department or the sales force of the Thomas J. Lipton Company?

A. Mr. M. A. Reilly.

Q. What is his title?

A. He is the vice president-sales and advertising.

Q. I see that Mr. Purcell is a director. Is he under Mr. Reilly?

A. No.

Q. Who is he under?

A. He is under the vice president of manufacturing.

Q. Who is that?

A. Mr. R. B. Law.

Q. How long has he held that position?

A. Mr. Law has been with us for about two years. Prior to that, it was Mr. Wallace Kennedy, who was the vice president for manufacturing.

Q. Where is Mr. Kennedy today?

1122 A. Well, at our headquarters in Hoboken.

Q. What position does he hold?

A. He is a vice president.

Q. The sales department of Thomas J. Lipton Company was interested in the quality of their products, were they not?

A. Definitely.

Q. At times did any one of these individuals that you have mentioned have discussions with you with reference to the quality of the products you were buying?

A. I don't recall that they did, Mr. Hays.

Q. On your direct examination, you testified that you received complaints from the trade about splinters in dehydrated onion. Who made those complaints?

A. The housewife who bought the soup.

Q. And how did you find out about that?

A. Through our legal department and our quality control department in the lab.

Q. These were received in letter form, were they?

A. Yes.

Q. Did you retain those letters?

A. I am sure that we must have. To be certain, I could not say, Mr. Hays, because our retention period is two years. I am sure that anything that relates to litigation, they would probably hold it longer, but I wouldn't be sure.

Q. Well, how did you know that the splinters came
1123 from the Basic onion as distinguished from any other onion you might have bought?

A. Well, we had splinters from the Basic and the Gentry onion.

Q. In other words, they both used these wood trays, is that right?

A. Yes, sir.

Q. I understand you went out to the west coast to look over the plant of the Basic Company.

A. Yes.

Q. When was that, Mr. Edwards?

A. At the same time I went to see Gentry.

Q. You looked over both their plants?

A. Correct.

Q. Did they both use these wooden trays?

A. Basic had gotten partially into the plastic tray, which doesn't have the splinter tendency. Gentry was still using some of the wood trays but, as I mentioned on direct examination, they had gotten into this Procter & Schwartz stainless steel type drying which has no wood in it. No wood comes in contact with the product, so they had made further strides toward the elimination of splinters and foreign materials as compared to Basic.

Q. Did you question the Basic people about how long

it would take them to change over to plastic trays completely?

1124 A. Yes, I did.

Q. What did they tell you about how long it would take?

A. For the volume I take from them, Mr. Hays, I insisted that it not be on wood trays. For my tonnage, all of my production is on the plastic tray. There still remain a substantial part of their production that goes to other customers not on plastic trays, but all of our production must be on the plastic trays.

Q. At that time, did you specify, in so far as your purchases from Gentry were concerned, that all of your production come from this process you have referred to?

A. Yes, after they had it installed, which was in 1954 or 1955, if I recall.

Q. So that prior to 1954, the onion that you used you found contained splinters?

A. Yes.

Q. And that onion came from both Basic and Gentry?

A. Yes, sir.

Q. And after you made your trip out to the west coast, since neither Basic nor Gentry's onion was processed any longer on wooden trays, it no longer contained splinters, is that right?

A. Right.

Q. Let us look at Respondent's Exhibit 123, Mr. Edwards. As I understand it, you request at the end of

1125 each year your suppliers to sit down and write to you the total dollar volume amount of their sale to you during the preceding year, is that right?

A. Right.

Q. Well, don't you already have that in your books in the company?

A. We do.

Q. Well, why don't you figure it up from those books?

A. You brought up a good point. I think any shrewd purchasing agent or any prudent purchasing agent, Mr. Hays, finds it good practice to have the supplier write him a letter—in other words, you bring into sharp focus the fact that you are doing a good business with him. That not only relates to onions, but to everything, flour, noodles and the whole works.

Q. You do that with every one of your suppliers?

A. Yes.

Q. To remind them what a good customer you are?

A. Yes.

Q. Why is that a good practice? What benefits do you expect from it?

A. That is a very good question. I think it improves your service. It puts you in a better bargaining position to get a better price, which, after all, is the aim of any purchasing agent.

Q. Is that the only benefits you know about?

1126 A. Yes.

Q. In other words, you really want them to be aware of the fact that you bought a lot in the past year? You don't really care what figures they send in, do you? You are not really interested in the figures. You just want them to be aware of the fact that you bought a lot during the past year.

A. Certainly I am interested in the figures, Mr. Hays. We don't make work unnecessarily. We want the figures. We want them to know it and we want to verify it with our own records. These figures are not just casually put into a book. They are checked back with our own records for the current year as to the veracity of them, and we find there is quite a difference, an error of as much as five percent, our records as compared to theirs.

Q. During the period of 1946 to the present, will you

name the Gentry salesmen who have contacted you and attempted to sell dehydrated onion and garlic?

A. You mean the local salesmen or all the people with the company that have been calling on me for 14 or 15 years?

Q. Well, name all the people that you can remember in the last 14 or 15 years, Mr. Edwards.

A. This is subject to—I see thousands of people and I don't think I can recall precisely, but I think I can answer to your satisfaction. I believe the first salesman who came in to see me from Gentry was a man by the name of Al
1127 Power. His superior was a man by the name of Lloyd Bellisime. The account is quite important, as you can see, so I would say collaterally they worked together very closely on it, Bellisime and Power. He was succeeded by a man by the name of J. D. Farrell, Joe Farrell, who was the local contact man. Bellisime was still the sales manager, vice president in charge of sales. Bellisime left the company and was succeeded by Farrell, the man who was the local sales contact man. Farrell went to the west coast in a sales position of authority and he was succeeded by a man by the name of Oscar Schek. He is the present contact man. All down the line I have known the official group in the Gentry company as well as the Basic Company. It is just good business, when you use this kind of tonnage, to maintain good, sound, solid supply relations.

Q. Were you contacted by Mr. Bellisime?

A. Yes.

Q. You were contacted by all these people?

A. Yes, sir, as well as the president of the company.

Q. Continually?

A. Yes.

Q. By the president, do you mean Dr. Prater?

A. Yes.

Q. Did you ever become aware of the fact that the

Gentry Company had been purchased by Consolidated Foods?

A. Yes, we did; at least, I did.

1128 Q. When did you become aware of that?

A. We keep well informed, Mr. Hays. We read the trade papers. We read the Wall Street Journal. We take a dozen different services. I probably knew it the day it happened.

Q. Is that sound, good, business practice?

A. Certainly, it is. The company goes to great expense to keep me informed as to what is going on in the trade. I spend millions of dollars for my company. I have to keep well informed. As a part of my knowledge of what's going on, I like to know if there are any mergers. I constantly get Dun & Bradstreet reports on all of my suppliers to keep up with the official setup and the solvency and the liquidity of the company and if there are any judgments pending or any dead horses on the trail. I want to know about it. We have to do it. Large scale buying calls for that.

Q. When you learned that Gentry had been bought out by Consolidated, were you familiar with the extent of Consolidated's operations?

A. No, only in a general way.

Q. Did you know that they were engaged in the wholesaling business?

A. Yes, I did.

Q. Were you familiar with their private labels?

A. Not intimately, no, sir.

Q. Did you know the names?

1129 A. There was no reason for me to know.

Q. I assume that when you say "not intimately," you were familiar to some extent, is that right?

A. Yes, sir.

Q. What was the extent of your familiarity?

A. I knew that Consolidated had been thrown together

rather quickly and they had a lot of brands, but if you pin me down, I couldn't tell you the name of one of their brands, Mr. Hays.

Q. You did know the type of operations they were engaged in?

A. Yes, sir.

Q. Did you know that they purchased Lipton products?

A. Yes, I did.

Q. Does Respondent's Exhibit 123 reflect all of the Lipton Company's purchases of dehydrated onion and garlic, Mr. Edwards?

A. Yes, Mr. Hays, I would say it is probably close to 100 percent. Of course, we may have gotten a spot shipment from Puccinelli or someone, but I don't recall. It was very unimportant, but this is probably 99.9 percent.

Q. How long have you been purchasing dehydrated onion and garlic?

A. Since we have been in business. No, that is specialized. I would say, to make it specific, since 1940.

Q. Since 1940, name all of your alternative sources
1130 of supply other than Basic.

A. I would have to tax my memory there, Mr. Hays. If you permit me to generalize, I can tell you that probably Puccinelli Packing Company in Turlock, California, and Gentry and Basic were probably the only three domestic producers. I may be wrong. There may have been others. I don't know of any others, though, as well as quite a bit of imported onions that come in from Egypt and the continent.

Q. You have used those?

A. They didn't comply with our quality specification.

Q. During the period 1946 to the present, did you purchase dehydrated onion and garlic from the Simplot Company?

A. No, we haven't bought any onions or garlic from Simplot.

Q. During the period from 1946 to the present, you have purchased dehydrated onion and garlic from—

A. Wait a minute, Mr. Hays. Before you asked me between 1946 and 1959, had we bought from Simplot?

Q. Yes.

A. No, we have not. Prior to that time—I don't recall. I bought millions of items. We may have bought some small amount from Simplot. I don't remember whether we bought from them. I know it wasn't of importance. Maybe during the war we did buy some onions from Simplot. As a matter of fact, during the war they were rationed and you couldn't get onions.

Q. And during the period from 1946 to 1959, did 1131 you buy dehydrated onion and garlic from the Puccinelli Packing Company?

A. No, sir.

Q. When this demand for onion soup began to express itself, did you consider these other two companies as alternative sources of supply?

Mr. Walker: Which other two?

Mr. Hays: Simplot and Puccinelli.

A. Not Simplot, because Simplot got out of the onion dehydrating business at the end of the war, if I remember there. I am subject to correction. I don't remember when precisely, but Puccinelli assiduously tried to sell us onions after the war and up until the last three or four years, but we never bought from them.

Q. But you consider Puccinelli as an alternative source of supply?

A. In a pinch, I guess we could have used Puccinelli.

Q. Why do you say "in a pinch"? Wasn't there a demand for this onion soup that required a substantial amount of dehydrated onion and garlic?

A. In case of a strike at the two plants or a fire at the two plants or a force majeure, we would have probably bought onions from anybody. If you were selling them, we would probably have bought them from you, if they met our specifications.

Q. Didn't you visit the Puccinelli plant to see what
1132 type of operation they had?

A. No, I did not. There are other reasons, too, Mr. Hays.

Q. What other reasons?

A. As I mentioned earlier, we get Dun & Bradstreet's on all of our suppliers or prospective suppliers, people we are interested in dealing with. In my considered judgment, I just did not feel that I wanted to buy from Puccinelli.

Q. Because of his Dun & Bradstreet rating in 1954?

A. Yes, sir.

Q. What particular factors reflected in that Dun & Bradstreet rating influenced your mind in this area?

A. You are asking me something that dates back many years. I will have to generalize and tell you from the best of my recollection. If I recall Puccinelli had had a bad fire record. His capital structure was quite flimsy. That is not impugning Mr. Puccinelli because he is a very fine man. He had been known in the trade as a sort of an in-and-outer. He didn't make contracts. That is also subject to memory that dates back 15 years. In the case of the other two suppliers, they went out and contracted for their tonnage with the farmers. Mr. Puccinelli, if there was a large crop and a distressed market, would buy at low prices which would put him in a good competitive position, which temporarily would react to the benefit of the buyer, but for the long pull I felt it would be better to be allied with
1133 good, sound, solid sources of supplies rather than an in-and-outer.

Q. Did Simplot make contracts?

A. Simplot got out of the onion business at the end of the war, I think.

Q. What war are you referring to, the Korean War?

A. World War II.

Q. As far as you know, they weren't engaged in the business of dehydrating onion?

A. My recollection is, Mr. Hays, that they were not. Of course, you are asking me a question that dates back over a period of 15 years. I see thousands of people and spend millions of dollars.

Q. On direct examination, Mr. Edwards, you indicated some familiarity with the sales policies of the Thomas J. Lipton Company. At least, you were able to testify that sales had been on the up side, is that right?

A. That's right.

Q. And you were able to testify that this was due to aggressive merchandising. Do I summarize your testimony fairly?

A. Yes, sir.

Q. Just what do you mean by aggressive merchandising?

A. Well, we took the Godfrey program, which cost us a lot of money. We enlarged our sales staff, and then I think in American business in the last ten years, if you were not increasing your sales, your firm was quite moribund.

1134 Q. When you refer to aggressive merchandising, you refer principally to the Arthur Godfrey type of advertising?

A. That's right, space, and radio and television time. We were just dedicated to making our business larger.

Q. Do you consider that the sales force of the Lipton Company is alert to every opportunity to increase sales?

A. I hope so, Mr. Hays.

Q. During the period from 1946 to 1959, did the Lipton Company sell their products to wholesalers?

A. Yes, sir.

Q. And during the same period, they sold their products to Consolidated Foods and the subsidiaries in that group?

A. So far as I know they did, Mr. Hays. I am not in the sales department, so I don't know for sure, but I understand that we did business with Consolidated.

Q. In so far as Mr. Purcell is concerned, does he frequently have discussions with other members of the Lipton Company or employees and vice presidents which you do not attend?

A. He could on occasion, yes. I don't know whether you would call it frequently, but our superior, the director of manufacturing, confers with Mr. Purcell and myself quite often.

Mr. Walker: Please speak up, Mr. Edwards.

Q. Do you have alternative sources of supply for other products that you purchase, other raw materials?

1135 A. That has been my policy. Don't be tied to one source of supply. For large volume, you must have good, solid sources of supply.

Q. What other types of supplies do you purchase?

A. We are probably the largest user of short-cut egg noodles in the world. We are probably the second largest user of hydrolized proteins in the world. We are substantial users of egg yolk. We are one of the largest users in the country of dressed poultry. We are very large users of corn sugars, cane sugars, dextroses, syrups, vinegars, seasonings, spices, the entire gamut of the food industry, Mr. Hays, about a hundred different products in very large volume.

Q. Do you usually select two sources of supply for each of these products, or in some do you have more or less?

A. In some, we have several sources of supply, more than two. If the volume is over $300,000 a year, I want at least two sources of supply, and if the opportunities are

there, I would like other sources of supply as alternative sources.

Q. In other words, there are a number of instances where you have more than two sources of supply?

A. Yes, sir.

Q. And are there some instances where you have only one principal source of supply?

A. I buy so many things, Mr. Hays, it would be hard to say specifically, but generally there is nothing that I
1136 buy that we buy from only one person.

Q. Let's put it this way: in the circles where you have only two sources of supply, do you usually split that half and half?

A. Yes.

Q. Are there any instances where you have two sources of supply where you give more to one than to the other?

A. Well, let me give you an example of that. In the case of sugar, there are 25 or 30 very large, substantial sugar companies in the country. We buy most of our sugar from the midwest, out of Denver. Sugar would probably be the one thing that I probably confine to one company, but there are alternative sources of supply that we could pull in. We could use other sugars. In the case of sugar, we buy the sugar from the Great Western Sugar Company.

Q. Sugar you buy from Great Western, one principal source of supply, is that right?

A. Yes.

Q. And how much annually do you buy from this company, how many dollars?

A. We buy probably $100,000 worth of sugar a year, but we buy other products that make it to my advantage to buy the sugar from the Great Western Sugar Company.

Q. What other products do you buy?

A. Hydrolized vegetable proteins.

1137 Q. You buy from them?

A. Yes, sir.

Q. Exclusively?

A. No, sir.

Q. Well, how is it to your advantage to buy from them exclusively in sugar because you buy these other products?

A. It improves my buying record on the hydrolized vegetable proteins, which is in fairly short supply. It makes my account a little more attractive to them if I take some of my sugar or a part of my sugar from them, the major part of my sugar from them. It makes my account more attractive to them if I buy the sugar from them, but we do on occasion buy some sugar out of the Louisiana territory for our Kansas City plant and on some we buy out of New York.

Q. But the bulk of your purchases come from Great Western Sugar?

A. Yes.

Q. In other words, hydrolized proteins are in short supply, is that correct?

A. They have for the last two or three years been in short supply.

Q. So in order to get the Great Western Company—do they make these hydrolized proteins?

A. Yes.

Q. In order to get them to sell you what you need
1138 of these hydrolized proteins, you buy the great bulk of your sugar from them, is that right?

A. I wouldn't put it exactly like you did, Mr. Hays. I would say it makes my account more attractive to them to have some sugar business. Do I make myself clear?

Q. Yes, sir. Does Mr. Purcell make any decisions about buying?

A. Yes, he is our director of purchases. I report to him, but in our set up, our buyers are given wide latitude with regard to the selection of suppliers and the price we pay and the extent of cover.

Q. Did he have anything to do with the decision with reference to your increased purchases from Gentry?

A. I report to him and we advise together. If he doesn't agree with me, I certainly want to come around—we have a meeting of the minds on it, yes. After all, he is the boss.

Q. Is the Great Western Sugar Company a subsidiary of any other company that you know of? Is it affiliated with any other company?

A. So far as I know, I wouldn't declare it for a certainty, but it is a large company. Then, too, we get a better price.

Q. I beg your pardon?

A. Our price on sugar is a little better from Great Western than we get out of New York City, which is probably one of the reasons for buying from them.

1139 Q. Mr. Edwards, does the fact that the Lipton Company sells products to Consolidated Foods affect in any way the fact that you buy dehydrated onion and garlic from Gentry?

A. No.

Q. It does not?

A. No, sir.

Mr. Hays: That is all.

Hearing Examiner Kolb: Is there any redirect?

Mr. Walker: Just a couple of questions, if I may, your Honor.

Redirect Examination

By Mr. Walker:

Q. Did you have any problems at Lipton with dehydrated onion and garlic in recent years with relation to foreign material or foreign matter other than wood splinters?

A. Not of any great importance, Mr. Walker. I believe that answers your question.

Q. Mr. Edwards, I know that you are probably reluctant

to discuss this area, but I feel that I must ask you this question: have you had at Lipton's any quality problems with the products produced by the Puccinelli Company?

A. Mr. Walker, as I mentioned to Mr. Hays, I think Puccinelli tried to sell us. He is a sort of an in-and-outer. Aggressively he will come in and try to sell you. Then you don't hear from him for maybe a year or two, but the
1140 samples that he submitted to us did not come up to our specifications. They just were not of the quality we wanted. If I recall, in principle, they were probably deficient or high in bacteria or too high in moisture. I really don't remember; it has been too long ago.

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1141 HAROLD FOREST SNOW, called as a witness on behalf of the respondent and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name?

A. Harold Forest Snow.

Q. Where do you live?

A. Pine Point, Maine.

Q. What is your occupation?

A. Cannery manufacturer.

Q. The name of the cannery?

A. The F. H. Snow Canning Company, Inc.

Q. What is your official position with the company?

A. President.

Q. How long have you been president of the company?

A. About one year.

Q. What positions did you hold with the company prior to that time?

1142 A. Vice president.

Q. During what period of time were you vice president?

A. For about 14 years.

Q. Would you please describe the duties that you had with the company as vice president during that period?

A. I have been general manager of the operations all during that time.

Q. Please describe the business of the F. H. Snow Canning Company?

A. The company is engaged in the canning of a varied line of food products, mainly of a sea-food nature. The principal items are clam chowder, minced and chopped clams.

Q. To whom are your products sold, Mr. Snow?

A. To jobbers throughout the United States and some extra-territorial areas.

Q. Do you make any sales direct to retail stores?

A. To chains and wholesale grocers, not direct to retail stores.

Hearing Examiner Kolb: Chains and wholesale grocers?

The Witness: Yes, sir.

Q. Through what channels are your products sold?

A. Through brokers.

Q. And do the brokers then sell your products to wholesale grocers, and do they also sell direct to the retail chains?

A. They make the sale and send the order in and 1143 we fill the orders.

Q. Under whose label are your products sold?

A. Mostly under Snow's Brand.

Q. Do you also do some packing under the labels of your customers?

A. Some, yes.

Q. And that is referred to as private-label packing, is that right, Mr. Snow?

A. Yes.

Q. During what period of time, Mr. Snow, has your company sold any of its products to any of the units of Consolidated Foods Corporation?

A. You mean to the Monarch Foods Company? I don't know just how many years, but we have sold to Monarch for longer than I have been with the company.

Q. Under whose labels were the products sold to Monarch that you have described?

A. Monarch Finer Foods.

Q. They were under the Monarch label?

A. Yes.

Q. So you were doing some private-label packing for Monarch, is that right?

A. Yes.

Q. Have you sold any products under your own label to any of the Consolidated units?

1144 A. Yes.

Q. What is your label, Mr. Snow?

A. Snow's.

Q. Which of your products, to your knowledge, have you sold to Consolidated?

A. I believe we have sold practically all of the major items to Consolidated.

Q. Have you made any sales to any retail units of Consolidated that you know of?

A. I don't believe so.

Q. Do you know how your products were sold to the Consolidated units that did buy them?

A. They were sold in the like manner that they would be to any other wholesale grocer organization.

Q. That is, by your brokers, is that right?

A. Yes.

Q. Do you know whether your brokers, in selling to Consolidated, Mr. Snow, sold directly to the wholesale units

involved or whether they sold through a Consolidated central office?

A. To the best of my knowledge, they sold to the units themselves and not through the Consolidated office, but I am not sure of that point.

Q. How large have your sales to Consolidated been in the last three or four years?

1145 A. I really don't know.

Q. Could you give us any estimate of the volume of those sales?

A. I am afraid I couldn't.

Q. Do you have any recollection as to whether your sales to Consolidated have gone up or down in recent years?

A. I am quite sure they have gone down.

Q. What accounts for that decrease, Mr. Snow?

A. Principally because of the chopped clam purchases. That is an institutional item, an item that is sold to institutions, and there has been a rather persistent competitive situation with regard to that item, and some of our competitors have named lower prices and taken quite a bit of private-label business, and along with that went a considerable percentage of the Monarch business.

Q. Would you be able to estimate whether your sales to Consolidated in the last three or four years have been over or under $25,000 a year?

A. I would think they might be over; I wouldn't know; though.

Q. In which of Snow's products are dehydrated onion or garlic used?

A. In the chowders, clam chowder, fish chowder, corn chowder.

Q. Who in your organization has made the decisions as to your source of supply for dehydrated onion and garlic?

1146 A. I have.

Q. From what companies have you purchased your requirements of dehydrated onion and garlic?

A. From Basic Vegetable Company and the Gentry Company.

Q. Mr. Snow, I show you Respondent's Exhibit No. 124 for identification and I ask you to examine it, please.

(The document referred to was marked Respondent's Exhibit 124 for identification.)

A. I have.

Mr. Walker: As you can see from the exhibit the source of the Gentry data is the Service Bureau Corporation.

Q. This exhibit shows your purchases of dehydrated onion and garlic in the years 1946 to 1958. Where was the data regarding your purchases from Basic obtained?

A. From our purchasing records.

Q. Was this data compiled under your supervision and control?

A. Yes.

Q. Why are there no figures here for your purchases from Basic in the years prior to 1954?

A. Because we do not keep purchasing records more than about six years.

Mr. Walker: At this time, I offer Respondent's Exhibit 124 for identification into evidence as Respondent's Exhibit 124.

Mr. Hays: I have the same reservation on this, your
1147 Honor.

Hearing Examiner Kolb: The document will be received in evidence subject to a motion to strike under the same reservations as stated with respect to Respondent's Exhibit 123.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit No. 124 for identification, was received in evidence.)

By Mr. Walker:

Q. Looking at this Exhibit 124, it indicates that your first purchase from Gentry was 300 pounds of garlic in 1950. What was the reason for that purchase?

A. I don't just remember. It probably was due to the fact that—perhaps it was due to the fact that Basic didn't handle garlic at that time, but I do not know just why there was one isolated purchase of garlic.

Q. According to this exhibit, Mr. Snow, you purchased 35,550 pounds of dehydrated onion from Gentry during 1951. What was the reason for this purchase?

A. The purpose of buying a carload of onion from Gentry was to start a program of using two sources of supply of onion. That, as I recall, was just about the time of the Korean crisis, and we remembered back to what happened to us in World War II, when we fared very badly so far as supplies of dehydrated onion was concerned and we 1148 didn't know what this Korean situation might bring about, and we felt that getting two sources of supply would be a desirable thing to do.

Q. Why, after purchasing from Gentry in 1951, did you not purchase from Gentry in 1952?

A. Normally, we would have purchased perhaps another car in 1952, but, very frankly, we did not find ourselves completely satisfied with the quality from two standpoints. One was that the product appeared considerably darker in color than the competitive, the Basic product. The other was that we found an occasional evidence of slivers of wood which in our method of packing did not lend themselves to removal by inspection too well. We went back to purchasing our requirements from Basic.

Q. What difference did this color make to you, Mr. Snow?

A. Our chowders, being of the milk base type, must be kept as white as possible. There is one of the chowders

which has always caused us quite a bit of trouble in darkening in processing. Therefore, we felt that it was very important to put our best foot forward as far as color is concerned.

Q. Well, after having this trouble that you have testified to with Gentry's product at the time you tried it, why did you commence purchasing from Gentry again in 1953?

A. I had several visits from the salesman that sold the Gentry products, who assured me that the color of the product was only apparent in that it was darker as it
1149 was taken from the can in which it was received, but that any final product would not be noticeably different in color with this product as compared with the whiter Basic product to begin with.

Q. After apparently receiving this information, Mr. Snow, why didn't you purchase any onion from Gentry in 1954?

A. The salesman was correct so far as the color angle was concerned, but it seemed that we ran into more wood chips and splinters in that lot than we did in the previous one, and then there seemed to be considerably more than there was in the Basic product. Once in a great while we would find one there. We just stopped again, frankly.

Q. Why did you buy again from Gentry in 1955, then?

A. About that time, of course, I had repeated calls by the salesman and I just told them that that was the situation. We wouldn't be able to go along with any more. He assured us that that problem would be—that we wouldn't have that problem any more. He asked for permission to book another car on that basis. I went along with the understanding that it would be free of chips, and it was, as a matter of fact.

Q. Did he tell you why he thought it would be free of chips?

A. Yes, he did.

Q. Why?

A. It had something to do with the employment of stainless steel handling equipment as compared to
1150 wood, which had been used in the past.

Q. Why did you continue buying from Gentry after 1955?

A. We found the quality completely satisfactory and we continued on with a two source of supply arrangement, which we have to this day.

Q. Were there any other reasons, Mr. Snow?

A. No, there are no other reasons. We like our men who use the onion in the product—they like the large chopped variety of onion that Gentry supplied a little better than the Basic product, and that accounts for the fact that there was more of the Gentry used during those three years than the Basic, but there were no other reasons.

Q. Once you finally determined to use Gentry on a regular basis as a second source of supply, as you have testified, how did you determine how much business to give to Basic and how much to give to Gentry?

A. It has been my policy more or less to split the business between the two companies. Frankly, from these records—and this is really the first evidence that I have had that it was predominantly Gentry, so predominantly Gentry—I was under the assumption that I was purchasing roughly half of our requirements from each, but it appears that the squeaking wheel gets the grease and now I realize that I was called on more regularly by representatives of Gentry, Gentry salesmen than I was of Basic. That
1151 really accounts for the difference in proportions.

Q. Do you always buy in carload lots, Mr. Snow?

A. Yes.

1152 Q. Why is that?

A. Well, to get the best price advantage. Actually, I would like to alter that. I used to buy in carload lots of

36,000 or thereabouts, but in the last two or three years there is a price minimum at around 15,000, and the supplier pays the stopover, so there is little reason to purchase more than that at a time.

Q. We have been talking all along here, Mr. Snow, about the dehydrated onion. What factors have influenced your decision as to a source of supply for dehydrated garlic?

A. Garlic is used in relatively small quantities in our product and is ordered only in quantities to last until the next shipment of onion would come in, and any time that we consider purchasing a car or a half car of onion, we look at our garlic supply and order enough to carry through.

Q. I have already explained to the Hearing Examiner that we have talked about this matter before your testimony today. Before that time, had you ever talked with anyone about a relationship of any kind between your sales to Consolidated and your purchases of onion and garlic?

A. No.

Q. Did you have any kind of a communication on that subject?

A. Relative to a tie-in between sales to the Monarch division and purchases from the Gentry? No.

Q. What effect has the fact that your company is
1153 a Consolidated supplier had on the volume of your purchases from Gentry?

A. None.

Mr. Walker: No further questions.

Hearing Examiner Kolb: You may cross examine.

Cross Examination

By Mr. Hays:

Q. During the period from 1946 to 1958, Mr. Snow, who was in charge of sales of the F. H. Snow Canning Company?

A. I have a sales manager, a fellow whose official title

is sales manager. I don't know just which year he came to work for us, but I would say it was around 1948. Prior to that time, we had no sales force. We did our own selling, my father and I.

Q. Your father and you?

A. That's right.

Q. And I take it your father was president of the company all during the time while you were vice president?

A. Yes.

Q. So he was in charge of selling, is that right?

A. I would say he was in charge of selling. We were together, but we employed brokers. From them on, the brokers took care of that.

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1155 Q. With reference to the Gentry people that called on you to try to sell you dehydrated onion and garlic, will you name those people and generally the year when they called on you?

A. There is a chap by the name of Bill White, I believe, that's been calling on me in recent years, and then a Mr. Oscar Schek, and also a fellow by the name of Andy Brodeki of Packers Laboratory in Boston, Massachusetts. They were brokers or agents for Gentry. That is the way I was called on more persistently by Gentry agents
1156 than Basic people. The Basic salesmen just don't call on me as regularly as the Gentry salesmen.

Q. What about during the year 1951? Who called on you from Gentry during that year?

A. I don't know.

Q. You can't remember anyone in 1951 who called on you?

A. There was a fellow who, I believe, has been promoted in the company, but I can't remember his name. It was neither one of those fellows. It was somebody else.

Q. I suggest the name Mr. Farrell to you.

A. Yes, Mr. Farrell.

Q. He called on you in 1951?

A. Well, yes, in 1951, I imagine. I think he called on me prior to that time, as far as that goes.

Q. Did he call on you in 1952?

A. I have been called uninterruptedly by Gentry agents. I just don't know when he stopped calling and when other people came in to take his place.

Q. Did Mr. Bellisime ever call on you?

A. That name is not familiar to me.

Q. In 1952, did you purchase dehydrated onion and garlic?

A. In 1952?

Q. Yes.

A. The records show that I didn't purchase any from Gentry but I certainly did from Basic.

1157 Q. And who was the other alternative source of supply in 1952, other than Basic?

A. I had none.

Q. You had no alternative source in 1952?

A. No. At that time, of course, I was looking for a second source of supply. I purchased just after the war years from another company and their product was not satisfactory, so I didn't want them as a second source of supply.

Q. What company was that?

A. I believe it was Sardik.

Q. And when did you have this unhappy experience with the Sardik Company?

A. I believe it was just after the war, just barely afterwards. It was onion powder that we were using at that time. With all due respect to them, it may have been some material which was the best they could have given me at the time because of priority regulations.

Q. By virtue of the fact that their material was not satisfactory to you at that time, have you failed to consider them as an alternative source of supply for every year since then, is that correct?

A. That's correct. I felt that Basic and Gentry were the two foremost.

Q. I notice that notwithstanding the fact that the Gentry product was not satisfactory in 1952, you did consider
1158 them as a source of supply in 1953?

A. That's right. Naturally, when I bought a car and didn't repeat within a year's time, which I normally would have done about that time—our business was smaller then—they were quite insistent on knowing why. I was quite frank to tell them that I just didn't like the product as well. I just did not repeat.

Q. Who was your alternative source of supply in 1954?

A. I had none. I purchased all my requirements from Basic in 1954. There wasn't too much purchased. There was only one carload.

Q. Who was your alternative source of supply in 1950?

A. I had none. I began to see the wisdom of looking around for a second source of supply about the time the Korean situation began to occur. I felt that after World War II, we were on firm sailing and everything was going to be all right, but there was a little bit of alarm there and we didn't like things too well. We have done that in other lines, cans and so forth. Whereas we used to have one source, we are generally inclined to shop around.

Q. If I understand your testimony correctly, you imply that because of the impending Korean conflict or because it had already broken out, that motivated you into taking on an alternative source of supply?

A. Yes.

1159 Q. Well, now, we no longer have that type of situation present since 1953, do we?

A. No, we don't, but we feel more strongly than ever, even today, that two sources are better. In cans, in those days, we purchased all from one source of supply. Now we have three. We drop back and forth. We feel that that is a good policy.

Q. What circumstances were present in 1955 up to date that were not present in 1946 through 1950, which indicate that alternative sources of supply are desirable?

A. I don't think I understand the question too clearly.

Mr. Hays: Please read it back.

(Question read.)

The Witness: Probably not too much. I probably could push that reasoning about two sources of supply too far here, but I would say that today we are more conscious of second sources of supply. We are larger users of products now than we were then. For instance, we bought all American cans during World War II. We didn't go into second and then third sources of supply until relatively recently, up in the middle or later fifties, before we finally diversified that way.

Q. When was it you diversified?

A. On what product?

Q. On cans.

A. Probably we started in the middle of the fifties, 1160 around 1953 or 1954, we took another source of supply and now, in the last couple of years, we have a third source of supply. Flour is the same way. We always purchased from one flour source. Within the last couple of years you have two and I intend to keep two. We find it goes well from a competitive standpoint.

Q. From whom did you buy your cans in 1951?

A. American, probably all American.

Q. That was right during the Korean War, wasn't it?

A. That's right.

Q. Is this still an independent company or have you sold out?

A. We merged with the Borden Company about a year ago.

Q. In your direct examination you referred to a persistent competitive position with reference to chopped clams. When did this competitive position first manifest itself?

A. I don't know. Probably four or five years ago, somewhere around that.

Q. In 1954, would you say, 1955?

A. Somewhere in there, yes.

Q. Just what was it?

A. There were other people who came into the clam business and produced clams. The only way to enter a market is to name a lower price and that is what they did. They took some of our business. I am not familiar with just when we lost a certain part of the business and when they got it. I know that our trend has been downward over those years.

1161 Q. What were the names of these companies that created this situation?

A. There is the Riggins and Robbins Oyster Company. They are a little company that have been producing. I don't even know that they are—I don't know who the other suppliers of Monarch are, frankly, that have taken some of that business. I don't know just which ones, but there are two or three. I don't know just which ones have done it. I know that there are some divisions of the Monarch Company that we are not the sole supplier of, like we were at one time. We founded this clam business and we were the first ones in it.

Q. Was this business private business?

A. Yes, private label.

Q. Did you also sell products of your own label to the

Consolidated Division from 1950 to the present?

A. I understand that we do sell some of Snow's label. I am not too familiar with all the sales that are made. My area is in the production and so forth. I believe that the Massachusetts Division, the New England Division, purchased some of Snow's products.

Q. Well, who is familiar with the sales if you are not?

A. Mr. Eldridge, my sales manager, would be. I don't go through the orders and follow that up too closely.

Q. What is his first name?

A. Samuel Webster Eldridge.

1162 Q. Did you consider it to be a sound business practice to sell private label clams?

A. I don't know just how to answer that question. Yes, if you can get orders for private label business. If we had our choice, if we were given a preference, we would always naturally want to sell under our own brand label, our brand.

Q. Why is that?

A. Because of brand acceptance; and it is not so easy for someone to take your business away because the final consumer doesn't really know that there has been a change. We would naturally prefer Snow's brand. We have no choice in accounts such as that and some of the other private label accounts that we sell.

Q. Do you sell private label clams to anyone who wants them?

A. Certainly.

Q. You do?

A. Yes.

Q. Any concern that wants to purchase under their own label, you will can for them?

A. Oh, yes.

Q. Did you ever have any conversations with Mr. Ed Bohnlofink of Consolidated Foods?

A. That name means nothing to me.

Q. During the period 1950 to 1957, did your father handle sales?

A. Between 1950 and 1957? No. Mr. Eldridge,
1163 when he came into our employ, he was the sales manager.

Q. And he handled those matters?

A. Yes.

Q. Were you on the premises of the company during those years?

A. Yes.

Q. Continually?

A. Yes.

Q. Do you know now that the Gentry Company belongs to Consolidated Foods?

A. I know it now, but I couldn't tell you just when I found it out, just what year I learned it. It didn't impress me too much when I learned it. I never thought of any relationship there.

Q. Well, during the period from 1950 to the present, for each year describe just what you had to do with the sales of the F. H. Snow Canning Company.

A. I, myself? Very little. I am consulted on every major issue, advertising programs. Maybe some competitive situation would show up. I would discuss that with them, as often happens, of course. As far as—I never have called on an account or a buyer. We have so many accounts that I really couldn't tell you just who is a customer of ours and who is not. I might know a few chains in the country. I might get 95 percent right or something like that, but
1164 I might know exactly whether our products are distributed in the Piggly-Wiggly stores in a certain area or not. My area, of course, has been production.

Q. When you testified with reference to your sales going down, when did that downward decline begin?

A. I honestly couldn't tell you because I am not that

close to it. At the end of a quarter, I generally know what our overall business picture is percentagewise, but as far as any one account, I never know. To be very honest with you, the only reason that I know that it is down is because when we were asked to dig out these figures, when Mr. Rothe asked us if we would divulge these basic figures, he gave us some inkling as to what it was about, my sales manager looked over the figures and commented on the inverse relationship of purchases of Gentry, who he reminded me again was a division of this Consolidated Foods and the Monarch to whom we sell. I would never have been aware of the fact that it was that much down. I knew that we were not supplying all the units with all the chopped clams, but as to what our over-all business volume, in dollars and cents, did in view of the general increase of over-all business, I wouldn't have known that if Mr. Eldridge hadn't told me that a few months ago when this thing first came up.

Q. In other words, you didn't know that your over-all sales were going down in the last few years?

1165 A. No. If anyone had asked me, I would have been able to tell them that I know that we didn't have all the business, but, after all, we show increases all the time and I wouldn't have known that it wouldn't have been made up in some other area. I vaguely am aware of some part—no, I was going to say that some of the clam chowder is made by someone else other than us, but I think that is another company. I don't think that is Monarch. I can't say that. I just don't have that information with me in mind as to just whose sales are up and whose sales are down. If we had lost about all of the business, a lot of it, it would have been brought home to me very forcibly. I couldn't tell you just when that trended down. I couldn't tell you just how much it is down, whether it is down 2 percent or 32 percent.

Q. It is not down more than 32 percent, is it?

A. I honestly couldn't tell you, but our figures are available to anyone who cares to stop in and see them.

Mr. Hays: That is all I have.

Redirect Examination

By Mr. Walker:

Q. It seems to me that from the form of Mr. Hays' question, he thought you were saying that your over-all sales were going down. Actually, you were testifying only that your sales to Monarch were going down, is that right?

A. Yes, not our over-all sales. They are not going 1166 down. I meant just the sales to Monarch.

Q. On cross examination you were testifying about your wanting to get two sources of supply for your cans. Do you remember that testimony?

A. Yes.

Q. Why did you want two sources of supply for onion in 1951 but apparently not two sources of supply for cans in 1951?

A. Onion from Gentry or Basic to us would be one and the same thing. The freight rate is the same. If the quality is the same, it wouldn't make too much difference. With cans it is just a little more complex. Back in the earlier days, perhaps the first part of 1950 and so forth, we were under contract. We went under contract, back in the 1940's. I think we went under a five-year contract. And during the war we were under a five or a three-year contract with American Can. Then it went down to a one-year contract. There was a court judgment handed down on American Can which eventually knocked it all out. But just didn't think of shifting around as much. Also, the various—with us we had a research station right in Portland and any time we had a question about a product as to the technical aspects of the can, we went to the research center in Portland. We knew if we did business with someone else on a certain size

can, it was embarrassing to ask American some technical details to use relative to Continental cans. Frankly,
1167 that research center has left Portland. There isn't quite such a close relationship although the service is well. In the old days it was just not as easy to think about more sources of supply of cans as it is today. Today it is very easy because of such an upset in their pricing system. As I say, we have taken on a third source of supply and a fourth one presented itself, like National—in fact, we even talked to them. We used each to the best advantage, but we couldn't do that with onion and garlic. There is no best advantage. If the quality is the same, then you buy a car, then it wouldn't make any difference who it came from. Certainly not to me.

Mr. Walker: No further questions.

Recross Examination

By Mr. Hays:

Q. How long has onion and garlic been the same, that it doesn't make any difference to you where it came from?

A. If the final product is the same, it wouldn't make any difference whether I bought it from Gentry or Basic. From any personal relationship, I mean, my friendship with the salesman and so forth. It wouldn't make any difference to me.

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1168 I. S. ROSEN, was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Walker:

Q. Would you state your full name, please?

A. I. S. Rosen.

Q. Where do you live?

A. Baltimore, Maryland.

Q. What is your home address?

A. Number 6302 Wallis Avenue, Baltimore 15, Maryland.

Q. What is your occupation, sir?

A. I am an executive.

Q. What company are you with?

A. Recipe Foods, Inc.

Q. What is your position with that company?

A. I am vice president in charge of manufacturing and purchasing.

Q. Where is the company located?

A. The main office is in Baltimore, Maryland.

Q. Where are the plants?

A. We have a plant in Baltimore and one in Terre Haute, Indiana.

1169 Q. How long have you been with the company, Mr. Rosen?

A. I have been with Recipe Foods since 1942, I think.

Q. Since 1942?

A. That's correct, or since the inception of Recipe Foods.

Q. In what business is the Company engaged?

A. We are manufacturers of mayonnaise and salad dressing productions, prune juice, chile sauce, preserves, jellies and a fruit drink called Fix-a-Drink.

Q. To whom do you sell your products, Mr. Rosen?

A. We sell it to wholesalers, distributors, chain stores.

Q. Through what channels do you sell your product?

A. We have direct salesmen. We also have a number of brokers.

Q. In what sections of the country do you sell, Mr. Rosen?

A. We sell some items on a national basis. The majority of our items are sold east of the Rockies, I would say.

Q. Under whose label do you sell your products?

A. Both under our own brand and private brands.

Q. What is your own brand?

A. Bennetts.

Q. During what period of time has Recipe sold any products to any units of Consolidated Foods Corporation?

A. Recipe has sold to Consolidated since they became Recipe Foods.

Q. What products did you sell to Consolidated during that period?

1170 A. Well, in the beginning, we were just mayonnaise and salad dressing manufacturers. We sold them mayonnaise and salad dressing products. As we manufactured other items, we sold some branches these other items. I think some are purchasing all of the items that we manufacture.

Q. Under what labels were those products sold?

A. Both under Consolidated's private label and under our label.

Q. What were the Consolidated labels, do you recall?

A. I think the earliest ones were the C.D. Kenny label. I believe that was the name. Then, later, when they acquired Monarch, we sold merchandise under the Monarch label. I believe there may have been some other labels, too. I'm not—was there a Dannemiller Division?

Q. Yes.

A. Then we sold that Division some merchandise under their label.

Q. Approximately how large were your sales to Consolidated in 1950, Mr. Rosen?

A. They were approximately $50,000.

Q. About how much did you sell to Consolidated in 1958?

A. Approximately $200,000.

Q. In between 1950 and 1958, what was the trend?

A. The trend was up. It was a gradual increase. This was a normal increase, in the same manner that our

1171 general business increased.

Q. Well, could you expand on that, please? What did cause this increase in your sales to Consolidated, in your opinion?

A. More outlets, a larger demand for our products.

Q. By more outlets, you mean more outlets owned by Consolidated?

A. That's correct.

Q. What was the amount of Recipe Foods' total sales in 1958?

A. Approximately $10 million.

Q. In which of your products do you use dehydrated onion and garlic, Mr. Rosen?

A. We use it principally in our chile sauce, and we use a large amount of the garlic—that is, percentagewise—in our so-called garlic dressing, or Italian dressing.

Q. In which of your products do you use capsicums?

A. We use capsicums in salad dressing, in our French dressings. I think that's it. Of course, there are various types of dressings, like a Thousand Island dressing and specialty dressings.

Q. Who has made the decision as to your source of supply for dehydrated onion and garlic and capsicums since 1950?

A. I have.

Q. From what companies did you purchase your dehydrated onion and garlic in the years 1950 to 1958?

1172 A. Nearly a hundred percent from Gentry.

Q. Did you purchase from any other companies?

A. I did purchase a small fill-in order from Basic.

Q. From what companies have you purchased your capsicums?

A. I purchased, I presume, the majority of it from Gentry, but we purchased sizeable quantities from McCormick and Company and Baltimore Spice. When I say sizeable, I mean that this is relative to the whole purchased.

Q. I show you Respondent's Exhibit No. 125 for identification.

(The document referred to was marked Respondent's Exhibit 125 for identification.)

By Mr. Walker:

Q. I direct your attention, Mr. Rosen, to the column which contains your purchases from Basic. The only figures that appear there are those for 1958. Were the amounts shown for 1958, your purchases from Basic, taken from your books and records?

A. No, this was supplied to us, but it was verified from our books and records. It was verified by us.

Q. Do you have any books and records showing your purchases of dehydrated onion and garlic for any year prior to 1955?

A. I think we have data for 1954. I may be mistaken. Yes, I have 1954.

Q. Do you have data for 1954?

1173 A. That's correct.

Q. Did you purchase any dehydrated onion or garlic from Basic in 1954?

A. My records do not show that I did.

Q. Mr. Rosen, you testified a moment ago—perhaps it was because I didn't make my question clear—that the data regarding your purchases from Basic in the year 1958 were supplied to you and you verified this. These figures actually came directly from your books and records?

A. I'm sorry. I knew that some figures had been supplied to me. This came from our records. At least, I verified that we purchased this.

Q. To the best of your recollection, did you buy any dehydrated onion from Basic in any year prior to 1954?

A. I don't remember buying any from them.

Mr. Walker: At this time, I would like to offer Respond-

ent's Exhibit 125 for identification into evidence as Respondent's Exhibit 125.

Hearing Examiner Kolb: That will be received in evidence subject to a motion to strike under the same provisions as were given with respect to Exhibit 123.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 125 for identification, was received in evidence.)

By Mr. Walker:

1174 Q. I should have asked, but I forgot to, Mr. Rosen, would you be willing to keep available your books and records showing purchases of dehydrated onion and garlic so that if government counsel should wish to examine them at any time, in order to verify these figures, he can do so?

A. I will be glad to.

Q. Why have you purchased practically all of your requirements of dehydrated onion and garlic from Gentry?

A. I found their quality satisfactory, the service was good. They have taken care of my requirements. The price was competitive and I enjoy doing business with the firm, or at least the representatives who call on me.

Q. Which representatives are you referring to?

A. Well, really, I am referring to Joe Farrell. I bought my original purchase in onion and garlic from Joe and we have maintained a very fine relationship over the years.

Q. Is that a motivating reason in your decision to purchase from Gentry?

A. It certainly is a motivating reason, yes.

Q. Is there any reason, Mr. Rosen, other than the ones that you have described, why you have given your business to Gentry over the years?

A. No, there isn't any other reason.

Q. You mentioned earlier, Mr. Rosen, that you pur-

chased some of your capsicums from McCormick and Company.

1175 A. That's correct.

Q. What is the reason for that?

A. From time to time we weren't able to get the quality product that we required from Gentry. We wanted a very high-colored product that was low in bacteria count. We weren't always able to get this from Gentry. At such times, we had to look for other sources, and sometimes the price was a factor.

Q. Mr. Rosen, I show you Respondent's Exhibit No. 81. This is a copy of a sales report dated April 17, 1951 by a Basic salesman whose initials were "LTD" concerning a contact with you. Would you read this, please, and let me know when you have finished?

A. I have finished.

Q. I would like to particularly direct your attention to the last sentence of this report: "If his laboratory confirms the fact that our quality is better than Gentry's at the same price, he plans to give us the business." I would like to ask you, was it true that you planned at that time to give your business to Basic if their quality was better than Gentry's at the same price?

A. I think I was. I don't remember it exactly, but I certainly will give the company the business whose product is best at the same price.

Q. Do you still feel that way, Mr. Rosen?

1176 A. I still feel that way.

Q. What function does your laboratory play, Mr. Rosen, in the selection of sources of supply for your ingredients?

A. The laboratory is practically the ultimate in the selection. They report the quality of the product, and this is one of the most important factors in our purchasing of raw material.

Q. To what extent have the Gentry salesmen worked with your lab people in connection with your products?

A. On several occasions we have asked them for some technical assistance in the handling of onion and garlic products in new products. They have given us this assistance and helped us in this manner in the development of some new products.

Q. I have explained to the Hearing Examiner that you have discussed this matter with Mr. Rothe and myself. Before we contacted you, had you ever talked with anyone about a relationship of any kind between any of your sales to Consolidated and your purchases of onion, garlic or capsicums?

A. Yes.

Q. Would you please describe that conversation, Mr. Rosen?

A. We were purchasing prunes from Rosenberg Brothers. In fact, we purchased practically 100 percent of our requirements from Rosenberg Brothers.

Q. Is that the Rosenberg that was a subsidiary of Consolidated?

A. That was. We purchased from them prior to
1177 the time that they became a subsidiary and also after they became a subsidiary of Consolidated.

Q. Excuse me for interrupting you, Mr. Rosen. Please go right ahead.

A. At that time, it took approximately a pound of prunes for every bottle of prune juice. When Consolidated took over Monarch, we felt that on an equal basis perhaps we ought to get some of this prune juice business, since for every bottle they bought it would be one pound of prunes coming from Rosenberg. I spoke to Joe Farrell about this. I finally had an appointment with Mr. Cummings. I spoke to Joe about it a couple of times, I presume. No business ever resulted.

Q. Did you consequently have this discussion with Mr. Cummings?

A. I did.

Q. When was that conversation?

A. It must have been in 1956.

Q. Just to make this perfectly clear—

A. I am not sure. It was either the fall of 1956 or 1957. I am not exactly sure.

Q. Just to make this perfectly clear, Mr. Rosen, did this conversation that you had involve packing prune juice under Consolidated's label or packing it under your own label?

A. It was Consolidated's label; specifically, Monarch and Royal Blue labels. It was for the Chicago area.

1178 Q. Since these conversations with Mr. Cummings and the Gentry salesmen, have you ever sold any private label prune juice to Consolidated?

A. Yes.

Q. When was that?

A. That, I think, we sold minimal amounts, very small amounts regularly to some of the eastern branches and mid-western branches.

Q. When you say "regularly," was that before or after the conversation with Mr. Cummings?

A. Before and after the conversation with Mr. Cummings.

Q. Would you say that your sales of prune juice under private label to Consolidated Foods Corporation—perhaps I better ask you this to make sure there is no misunderstanding here. The sales that you are talking about to these Consolidated units of prune juice—were they under your label or under Consolidated's label?

A. Under both.

Q. And in so far as they were under Consolidated's label, has there been any increase in your sales of prune

juice to these units since the time you had these conversations?

A. Actually, our largest sales to Consolidated on prune juice were last year. This was after Rosenberg Brothers had been sold by Consolidated.

Q. Under what labels of Consolidated did you pack
1179 prune juice?

A. We packed a small amount under Kenny. I think we packed some under Dannemiller's label. We packed a little bit under Monarch, a very small quantity under Monarch, and we have sold them under our own Bennetts label and Do-Rite now.

Q. I would like to go back, Mr. Rosen, to your description of the conversations that you had about this prune juice matter. The way you described them, it involved Rosenberg and your efforts to sell prune juice, but how did they involve onion and garlic?

A. I was very friendly with Joe Farrell. When I would see Joe, I would just say, "I don't think that we have been getting any consideration in the Chicago area. I feel that on an equal basis we ought to get some business." Joe said, "Well, I will talk to somebody." Nothing ever resulted. There was just one appointment that I had with Mr. Cummings, and this did not result in any business.

Q. What effect has the fact that your company is a Consolidated supplier had on the volume of your purchases from Gentry?

A. None.

Q. I show you Commission's Exhibit 169, which is a memorandum dated October 14, 1958, from Bob Gallo, a Basic salesman, to Mr. R. J. Sparling, who is Basic sales manager. This memorandum states in part as follows:
1180 "When I covered Baltimore and South Jersey, two accounts in particular hesitated to place business with us because of sales to Consolidated. They are"—naming

another company — "and Recipe Foods of Baltimore." I would like to ask you whether that statement that I just read is true; that is, did you hesitate to place business with Basic because of your sales to Consolidated?

A. No.

* * *

Cross Examination

By Mr. Hays:

Q. Mr. Rosen, just how long have you been in charge of manufacturing and purchases?

A. From the beginning of Recipe Foods. I was one of the original stockholders of Recipe Foods.

Q. You have a plant at Baltimore, is that correct?

A. That's correct.

Q. You have a plant at Terre Haute, Indiana?

A. That's correct.

Q. Does the Terre Haute plant have a purchasing agent?

A. No.

Q. Does it have anyone there who has handled pur-
1181 chases since 1950?

A. They have a plant manager who has the authority to order in on contracts that I have made, or from sources that I authorize, and in cases of emergency, to purchase fill-ins from those sources where they might see best, but he is not a purchasing agent and it is the general manager who has this authority.

Q. And what is his name?

A. Lewis Marcus.

Q. How long has he been at Terre Haute in this capacity? Is it since 1950?

A. I believe so; I can't tell you the exact time when he came into our employ.

Q. In 1947, did you only use 125 pounds of dehydrated onion?

A. To the best of my knowledge, that is approximately the amount that we used.

Q. Since 1947, have you bought exclusively from Gentry dehydrated onion and garlic?

A. For all intents and purposes, I have bought exclusively from Gentry.

Q. What do you mean for all intents and purposes?

A. Well, there may have been small fill-in shipments that may have been needed and we had several wholesalers in Baltimore or in the vicinity of Terre Haute where we could get these emergency shipments.

1182 Q. I take it you do not believe in alternative sources of supply?

A. It has been a principle of our company, wherever possible, to purchase our requirements from a single source. The reason for this is that we want to make our account valuable to our supplier.

Q. You mean the more you buy, the more valuable you are?

A. We feel that way.

Q. Just describe the products where you have bought from one source in 1959?

A. Well, in 1959, we purchased, I would say, better than 90 percent of our requirements of oil from one company. We use approximately 400 cars of oil a year. A car of oil, priced in 1959, was approximately $9,000 per car. We concentrated better than 90 percent of our purchases with one company, and in prior years we had done the same thing. In 1958 and in years prior to that we purchased practically 100 percent, I would say, of our egg requirements from one company. Our egg purchases will average between three-quarters of a million and a million dollars. We had one source of supply. Well, these are two of the principal items that we use. Those are a couple of examples.

Q. How is it advantageous to you to have one source of supply in each of those products?

A. We feel that they take a greater interest in our
1183 business in that we get better quality, better service, any price advantage that might be available; that is, through quantity purchase, and this has worked out very satisfactorily for us.

Q. Do you feel that your suppliers are aware of the fact that you are a large purchaser and a desirable customer?

A. I should say they are; they definitely are, and I feel that they go out of their way to take care of our account. To give you a little example, we endeavor to keep our oil as fresh as possible because it will deteriorate, so that we keep very limited supplies of oil in our plants and schedule tank cars in daily. On occasions, you will run into a bad tank, a hot box, a derailment or anything else that might delay a shipment, and we need oil. Well, our present supplier will tank oil to us in tank trucks, which costs them money, from any locality in which they can find it in order to keep us going. They will divert cars that may have been shipped out of the company to keep us going. These are services that we get through very fine relationship that we have with the supplier.

Q. Do you believe that your customers who buy large quantities from you find it advantageous to do so because of these same reasons?

A. I think they do, yes; I think they do.

Q. In other words, for a large customer, you would go out of your way to see that he is satisfied price-wise,
1184 quality-wise and service-wise, is that right?

A. That's right. We would do it for a small customer, too, but I think it is only human that you jump a little faster for a larger customer.

Q. Do you consider Consolidated Foods one of your larger customers?

A. Consolidated Foods is an important account.

Q. Is it the largest one you have?

A. It is not.

Q. Is it one of the largest?

A. Consolidated Foods is not among the ten largest customers that we have.

Q. And how much did Consolidated Foods buy from you in 1959?

A. The last I have here, whatever it is, it was approximately $200,000. That was in 1958. That is the last figure I have.

Q. You expressed on your direct examination what I shall characterize as a high regard for Mr. Joe Farrell.

A. That's correct.

Q. And do you have any reservations in this area? Do you think he is a truthful man?

A. I never found him to be otherwise.

Q. Did Mr. Farrell ever call you about purchases you made from Basic in 1953?

A. Not that I know of, not that I remember.

1185 Q. You don't deny that he called you, do you?

A. I don't remember him calling me.

Q. Well, do you deny it?

A. He may have, but I don't remember that he called me.

Q. But you surely don't deny it, do you?

Mr. Walker: That is the third time the question has been asked.

Mr. Hays: And the third time he hasn't answered.

Mr. Walker: He said he does not remember.

Mr. Hays: I asked if he denies it.

Hearing Examiner Kolb: I will let the answer stand.

Q. I show you Commission's Exhibit No. 32 and I ask you to read it and I ask you if it refreshes your recollection.

A. He said he called me. I presume he did if he says so, but I don't remember him calling me. I do not remember the incident.

Q. Do you remember purchasing Basic material?

A. In 1953, I don't remember.

Q. Mr. Rosen, did you have a laboratory in 1951?

A. I am sure we had a lab in 1951.

Q. Will you describe it, please?

A. It was a control lab. It had a minimal amount of instruments then, but such things as were necessary for control purposes.

Q. Where was it located?

1186 A. At Terre Haute, Indiana.

Q. Will you describe its dimensions? Was it one room?

A. It was one room.

Q. And how many employees did you have that were engaged in lab work?

A. One person.

Q. What was his name, sir?

A. I'm not even sure that it was a him. It may have been a woman. I don't remember.

Q. Did you ever test any dehydrated onion and garlic products in this lab in 1951?

A. In 1951 we were employing outside services. Our principal service was a company called Epstein, Reynolds and Harris. They constantly tested raw material products for us.

Q. Did they test dehydrated onion and dehydrated garlic?

A. I assume they did.

Q. In 1951?

A. I would assume they did.

Q. When you say "constantly," how often do you mean by that?

A. Whenever we sent them samples.

Q. And how often did you send them samples?

A. Whenever we considered it necessary.

Q. Could you give us some idea of what that time period was?

A. It varied with various items, as, for instance, we would send production samples, some raw material
1187 samples weekly; if necessary, bi-weekly. An item like onion and garlic, we probably made a routine check of it possibly once a year or even less frequently than that.

Q. Did your company receive in 1951 from the Basic Company samples to be tested?

A. We may have. I can't tell you absolutely.

Q. Did you evaluate the results of those tests?

A. If we received the samples, we evaluated the results of the test.

Q. And the company that made those tests would be your own lab or this outside firm?

A. I don't know which did it.

Q. What is the most recent test of dehydrated onion and garlic that your company has made, either in its own laboratory or through an outside firm?

A. We established a lab in Baltimore about six years ago, I would say—probably 1953 and 1954—and there have been comparative tests of samples made periodically in that lab.

Q. Do you have records of those tests?

A. I would presume that there would be some records of the tests, yes.

* * *

1196 Q. Does your testing of dehydrated onion and dehydrated garlic include a test for bacteria count?

A. We have made a few tests on bacteria count on onion and garlic. Actually, however, we have used most of the

onion and garlic after they were processed, and they were not of as much concern to us as was the paprika, which was used without any processing.

Q. The bacteria count was a concern, however, to some degree in onion and garlic?

A. It definitely was. However, again, we overcame this factor and it did not become as essential to us because we were able to kill the bacteria through our rehydration and processing processes.

Q. Was there a time when the bacteria count in dehydrated onion and garlic bought from Gentry—was there a time when that bacteria count was higher than you thought it should be for your product?

A. We would have preferred to have a very low bacteria count, but we were able to handle the product with 1197 the bacteria count that it had.

Q. At the time when you tested a shipment of Gentry's onion and garlic which had a higher bacteria count than you preferred, did you then conduct a test of the Basic Vegetable Products' onion and garlic to see what its bacteria count was?

A. I don't believe that we did; I don't remember.

Q. Did a Mr. Bob Gallo of Basic Vegetable Products call on you in 1958?

A. He did not call on me.

Q. Do you know whether or not he called upon Mr. Markus in Terre Haute?

A. That I wouldn't know.

Q. Do you know whether or not Mr. Gallo contacted anyone at your company in 1958?

A. No, I don't.

Q. In 1951, did you visit the Basic plant in California?

A. No.

Q. In 1951, did you know Mr. Nathan Cummings of Consolidated Foods?

A. I had met Mr. Cummings prior to 1951. He had lived in Baltimore.

Q. Had Mr. Markus ever requested permission of you to buy dehydrated onion and dehydrated garlic from Basic Vegetable Products Company?

1198 A. I believe that Mr. Markus mentioned Basic Vegetable as a source to me. I don't remember the conversation exactly, but I believe that he did mention it to me. I believe that I said that in those instances where he might require fill-ins, he has permission to purchase those emergency fill-in orders.

* * *

1200 Q. In 1953, did your company sell its products to the C. D. Kenny Division of Consolidated Foods?

A. I am sure we did.

Q. During the period from 1950 to the present, have your sales to Consolidated Foods been private label or your own label?

A. Both.

Q. Have they been both continually during this period?

A. To the best of my knowledge, it has been both.

Q. Do you have any preference as to whether you sell private label or your own label?

A. Yes, we prefer selling our own label.

Q. Why is that?

A. Because it strengthens our own brand identity in the consumer's mind. This gives our brand stability.

Q. What factors operate to cause you to sell private label or pack private label when you do?

1201 A. Well, we are primarily a private label house. It is our field. We specialize. We tailor products to our customers' demands. That is our business.

Q. You are essentially a private label concern?

A. With few exceptions. For instance, our chili sauce is not sold under private label to anyone. Our Fix-a-Drink line we don't sell any private label, but in our mayonnaise and salad dressing, we are primarily a private label house.

Q. What volume of your sales are taken up by mayonnaise and salad dressing?

A. This is an approximation now. I would say about 80 percent.

Q. So that in those two products, you have no public acceptance for your own brand, is that right?

A. In certain communities we do have.

Q. In salad dressing?

A. Yes, in mayonnaise and salad dressing. There are communities in which our label has a definite acceptance over other labels, and there is a demand for our label.

Q. Where is that?

A. Well, Baltimore, for instance. We have been established in Baltimore for a great many years. People know the Bennett label, even pay a premium for it.

Q. In Baltimore?

A. Yes.

1202 Q. Is that true anywhere else?

A. Yes, I think there are other communities.

Q. Which ones do you think there is a preference for that label, the Bennett label?

A. I am not in sales. I am in production and purchasing, so that my observations are just observations. For instance, in Boston, we have a good acceptance on our Bennett label. I know this because we ship it to some of the large chain stores there. I am sure there are other communities.

Q. Well, in any event, the Bennett label takes up about 20 percent of your total annual sales?

A. No, I did not say that.

Q. I thought you did?

A. I said that 80 percent of our business was in mayonnaise and salad dressing, and that we are predominantly a private label manufacture of these products. I would estimate that our own labels account for approximately 40 percent to 45 percent of our total mayonnaise and salad dressing business.

Q. And what percentage of your total over-all business does your own label take up?

A. About 50 to 55 percent. These are just approximations, you understand.

Q. Did you commence processing private label merchandise before you had your own label? Which came first, your label or the private label?

1203 A. Do you want me to go into the history of this?

Q. Yes, sir.

A. I was originally associated with a Mr. Marks, Theodore Marks, and his wife as partners in a company called Marks Prize Recipe Foods. This company was started approximately back in 1935 as a partnership of Mr. Marks and his wife. Mr. Marks originally, his original sales were as a sales agent and he sold private label principally. He later developed his own label. which was called Marks Prize Recipe. He did not own his own plant.

In 1942, or approximately at that time, he brought me in as a partner to start a manufacturing operation. We started a plant in Lafayette, Indiana and then moved down to Terre Haute, Indiana. We then incorporated and became Recipe Foods, Inc. After the incorporation, we had consolidated with another mayonnaise manufacturer by the name of Bennett Foods. When we consolidated with Bennett Foods, we felt that Bennett's had the better brand acceptance and we kept the Bennett label and dropped the old Marks Prize Recipe label. That is the history of it.

Q. When did you first start selling Consolidated Foods private label?

A. Consolidated Foods had been sold for many years prior to Recipe Foods by a company called Bennett Foods.

That is the company that we consolidated with in 1944.

1204 We inherited this business through the consolidation.

Mr. Hays: That is all I have, your Honor.

Redirect Examination

By Mr. Walker:

Q. Going back to this question of the quality of the Basic and Gentry products, I just want to ask you one question about that. Irrespective of whether you are the results of these tests, just lay that aside for purposes of this question. Have you ever felt personally that Basic has a better quality onion or garlic at the same price as Gentry?

A. No.

Mr. Walker: No further questions.

Recross Examination

By Mr. Hays:

Q. What was the basis of your determination, lab tests or some other basis?

A. Lab tests, performance tests, whatever they were as reported to me.

• • •

1208 New York, New York
August 23, 1960

1209 PROCEEDINGS

Hearing Examiner Kolb: The hearing will come to order.

Whereupon,

GLEN EUGENE KNAUB was called as a witness for the Respondent and, having been first duly sworn, testified as follows: